

Exhibit 1

Table of Contents

4.72.6

Section 415(b)

4.72.6.1	Overview
4.72.6.1.1	Technical Overview
4.72.6.2	SPECIFIC PLAN REQUIREMENTS
4.72.6.2.1	General Definitions and Concepts
4.72.6.2.1.1	Plan
4.72.6.2.1.2	Employer
4.72.6.2.1.3	Limitation Year
4.72.6.2.2	Examination Steps
4.72.6.3	IRC 415(b) Limits
4.72.6.3.1	Cost of Living Adjustments (COLAs)
4.72.6.3.1.1	Examination Steps
4.72.6.3.2	Average Compensation for High-3 Years
4.72.6.3.2.1	Examination Steps
4.72.6.3.3	Annual Benefit
4.72.6.3.4	Adjustments to Benefits and Limitations
4.72.6.3.4.1	NO Adjustments Required
4.72.6.3.4.1.1	Ancillary Benefits
4.72.6.3.4.1.2	Qualified Joint & Survivor Annuity
4.72.6.3.4.1.3	Post-Retirement Cost-of-Living Increases
4.72.6.3.4.2	Adjustments Are Required
4.72.6.3.4.2.1	Other Forms Of Benefit
4.72.6.3.4.2.1.1	GATT Changes Assumptions Used For Form Adjustments
4.72.6.3.4.2.1.2	SBJPA Amends GATT
4.72.6.3.4.2.2	Employee Contributions
4.72.6.3.4.2.2.1	Mandatory Contributions
4.72.6.3.4.2.2.2	Voluntary Contributions
4.72.6.3.4.2.2.3	Transfer of Assets or Liabilities
4.72.6.3.4.2.2.4	Rollover Contributions
4.72.6.3.4.2.2.5	Employee Contributions as Separate DC Plan
4.72.6.3.4.2.2.6	Unreasonable Conversion Rate
4.72.6.3.4.2.3	Examination Steps
4.72.6.3.4.3	DB Limitations Adjustments
4.72.6.3.4.3.1	Benefits Commence Before SSRA
4.72.6.3.4.3.2	Benefits Commence After SSRA
4.72.6.3.4.3.3	Exceptions
4.72.6.3.4.3.4	Transition Rules After SBJPA/Rev. Rul. 98-1
4.72.6.3.4.3.5	Examination Steps
4.72.6.3.4.4	QDROs and IRC 415
4.72.6.3.4.5	Social Security Supplements and IRC 415
4.72.6.3.4.6	Participation or Service of Less Than 10 Years
4.72.6.3.5	Special \$10,000 Minimum Benefit
4.72.6.3.6	When to Apply IRC 415(b) Limitation
4.72.6.3.7	Combining Plans

Table of Contents

4.72.6.3.7.1	Examination Steps
4.72.6.3.8	Non-Cash Distributions
4.72.6.3.8.1	Annuity Contracts
4.72.6.3.8.1.1	Single-Sum Distributions
4.72.6.3.8.1.2	Deferred Annuity Payments
4.72.6.3.8.2	Springing Cash Value Life Insurance Policies
4.72.6.3.8.3	Variable Annuity Distributions
4.72.6.3.9	Transitional Rules and Protected Benefits
4.72.6.3.9.1	ERISA Protected Benefits
4.72.6.3.9.2	TEFRA Protected Benefits
4.72.6.3.9.3	TRA '86 Protected Benefits
4.72.6.3.9.4	RPD '94 (GATT) Old-Law Benefits
4.72.6.3.10	Examination Steps
4.72.6.4	Funding and Deductibility
4.72.6.4.1	Limiting the Projected Benefit
4.72.6.4.1.1	Dollar Limitation
4.72.6.4.1.1.1	Automatic COLA Adjustments
4.72.6.4.2	Compensation Limitation
4.72.6.4.3	Adjusting IRC 415(b) Limit for Benefits in Other Plans of Employer
4.72.6.4.4	Examination Steps

Exhibits

4.72.6-1	Appendix A — Annuity Factors
4.72.6-2	Appendix B — Actuarial Equivalence

4.72.6.1 (12-01-2002)

Overview

- (1) Guidance is provided for examiners on examining defined benefit plans subject to the limitations of IRC 415(b), as amended under Title VII of the Uruguay Round Agreements Act, Pub. Law 103-465 (GATT), the Small Business Job Protection Act of 1996, Pub. Law 104-188 (SBJPA), and the Taxpayer Relief Act of 1997, Pub. Law 105-34 (TRA '97). (Certain changes enacted under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. Law 107-16, that affect IRC 415(b) are provided as parentheticals.)

4.72.6.1.1 (12-01-2002)

Technical Overview

- (1) IRC 415 was added to the Code by the Employee Retirement Income Security Act of 1974 (ERISA) and was generally effective for years beginning after 1975. IRC 401(a)(16) provides that a trust is not a qualified trust under IRC 401 if the plan of which such trust is a part provides for benefits or contributions that exceed the IRC 415 limitations.
 - a. IRC 415(b) limits the annual benefit that can be accrued or paid to a participant under a defined benefit (DB) plan, while IRC 415(c) limits the amount of employer and employee contributions that may be allocated to an individual's account under a defined contribution (DC) plan.
 - b. For limitation years beginning before 2000, where an individual is a participant in both a DC and DB plan maintained by the same employer, the benefits under both plans are subject to the combined plan limitation of IRC 415(e). IRC 415(e) was repealed by SBJPA, effective for limitation years beginning after 1999.

4.72.6.2 (12-01-2002)

SPECIFIC PLAN REQUIREMENTS

- (1) Reg. 1.415-1(d) provides that the terms of a qualified plan must preclude the possibility that the limitations imposed by IRC 415 will be exceeded. Thus, the terms of a DB plan must not allow a participant to accrue a benefit in excess of the IRC 415(b) limitation. Therefore, a plan may fail to satisfy the IRC 415(b) limitations even though no participant has actually accrued or received a benefit in excess of these limitations. See Reg. 1.415-3(a).
- (2) The Tax Reform Act of 1986 (TRA '86) provided that the limitations of IRC 415 (herein referred to as IRC 415 limits) could be incorporated by reference, but such an incorporation by reference must not violate the definitely determinable requirement of Reg. 1.401(a)-1(b)(1). Thus, the terms of the plan must preclude employer discretion, and any rules that allow optional methods of compliance must be stated in the plan.

For example, more than one definition of "compensation within the meaning of IRC 415(c)(3)" may be used for purposes of applying the IRC 415 limits. A plan that otherwise incorporates IRC 415 by reference must specify which definition of compensation is incorporated.

4.72.6.2.1 (12-01-2002)

**General
Definitions and
Concepts**

- (1) The following general definitions and concepts are relevant to IRC 415(b).

4.72.6.2.1.1 (12-01-2002)

Plan

- (1) IRC 414(j) defines a DB plan as any plan which is not a DC plan. Under a DB plan, participants accrue a benefit each year under a formula that must be explicitly stated in the plan. See Reg. 1.401-1(b)(1)(i), and Regs. 1.401(a)-1(b)(1)(i) and (iii).
- (2) "Accrued benefit", generally, refers to pension or retirement benefits and not to ancillary benefits not directly related to retirement benefits. These accruals must be limited as required under IRC 415(b) (and 415(e), as appropriate, for limitation years beginning before 2000).
- (3) IRC 415(f) and Reg. 1.415-8 provide that for purposes of applying the 415(b) limitations, all DB plans (whether or not terminated) ever maintained by an employer are to be treated as one DB plan.
- (4) IRC 414(a) provides that for purposes of that section, in any case in which the employer maintains a plan of a predecessor employer, service for the predecessor is treated as service for the employer. Accordingly, benefits and service for a predecessor employer are taken into account with benefits and service for a successor employer for IRC 415 purposes.

Example 1: Company X maintained a DB plan for 5 years before it terminated the plan in 1992. Company X adopted another DB plan in 1994. For those employees who have participated in both plans, benefits under both plans must be combined for purposes of applying the IRC 415 limits.

4.72.6.2.1.2 (12-01-2002)

Employer

- (1) IRC 414(b), (c), and (m) provide that for purposes of IRC 415 all employees of all corporations which are members of a controlled group of corporations (within the meaning of IRC 1563(a), determined without regard to IRC 1563(a)(4) and (e)(3)(c)), all employees of trades or businesses (whether or not incorporated) which are under common control, and all employees of the members of an affiliated service group are treated as employed by a single employer.
- a. IRC 415(h) provides that for purposes of applying IRC 414(b) and (c), the phrase "more than 50%" shall be substituted for the phrase "at least 80%" each place it appears in IRC 1563(a)(1).
- (2) IRC 414(n) provides that, for purposes of IRC 415, a leased employee is treated as an employee of the recipient of the leased employee's services.
- a. In particular, benefits or contributions provided by the leasing organization that are attributable to services performed for the recipient are treated as provided by the recipient.

- (3) Where (i) a company is a member of a controlled group or affiliated service group that maintains a plan covering its employees, and (ii) the company subsequently leaves the group and establishes an unrelated new plan, the plan of the prior group is aggregated with the company's new plan for purposes of applying the IRC 415 limits to employees covered by both plans.
 - a. All DB plans ever maintained by an employer are treated as one DB plan, and all DC plans ever maintained by an employer are treated as one DC plan for purposes of applying the limitations of IRC 415(b), (c), and for limitation years beginning before 2000, (e) (and in this case, the company would be treated as maintaining both plans). See IRC 415(f) and Reg. 1.415-8(a).

Example 2: Companies A, B, and C are members of a controlled group of corporations. Employees of all members of the controlled group are eligible to participate in a DB plan, Plan A. The plan year and limitation year of Plan A are both the calendar year.

On 4/30/93, Company B terminates membership in the controlled group, and immediately establishes a new DB plan, Plan X, and a DC plan, Plan Y, for its employees. Both Plan X and Plan Y have a calendar year plan year and limitation year. No transfers of assets and liabilities within the meaning of IRC 414(l) are made from Plan A to the new Plan X.

For the 1993 limitation year and subsequent limitation years, benefits under both DB plans (Plan A and Plan X) must be aggregated for purposes of applying the IRC 415(b) and, for limitation years beginning before 2000, IRC 415(e) limitations. Company B would be treated as maintaining both plans.

4.72.6.2.1.3 (12-01-2002)
Limitation Year

- (1) The IRC 415 limits are applied to a limitation year, which is the calendar year unless another consecutive 12 month period is elected by the employer. See Reg. 1.415-2(b) for the definition of limitation year and special rules.
 - a. The election to use any other consecutive 12 month period as the limitation year (other than the calendar year) must be made by the adoption of a written resolution by the employer. This election can also be made in connection with the adoption, by the employer, of the plan or any amendments to such plan. Once the limitation year is established, it may only be changed by one of the election methods described above.
 - b. If a change is made, the new limitation year must be a consecutive 12 month period which begins on any day within the prior limitation year.
- (2) If the employer changes the limitation year, a short limitation "year" or period is created because the new consecutive 12 month period must begin on a day within the current limitation year. The short limitation period begins on the first day of the current limitation year and ends on the day before the first day of the new limitation year. Unlike DC plans,

where the dollar limitation applicable to the short limitation period is prorated, the dollar limitation is not prorated in the case of a DB plan. See IRC 415(c) examination guidelines for DC plan proration rules.

- (3) As a general rule, a group of employers which constitute a controlled group of corporations, commonly controlled trades or businesses or affiliated service groups, within the meaning of IRC 414(b), (c), or (m), must all make the same election with respect to the limitation year.
 - a. An employer that maintains more than one qualified plan must generally use the same limitation year for each plan.
 - b. However, an employer that maintains more than one plan, or a group of employers described above, may elect to use different limitation years as prescribed by Rev. Rul. 79-5, 1979-1 C.B. 165. This Rev. Rul. is designed to provide relief in the case of two or more large plans of the same employer with accounting systems based on different plan years and few, if any, participants covered by more than one plan. The rules are complex and somewhat more restrictive than the general case.

4.72.6.2.2 (12-01-2002)
**Examination
 Steps**

- (1) Determine all DC and DB plans currently maintained by the employer (or that have ever been maintained by the employer), along with their effective dates and earliest participation dates.
- (2) Determine whether the employer is a member of a controlled group of corporations, a member of trades or businesses (whether or not incorporated) which are under common control, or a member of an affiliated service group. Taking IRC 415(h) into account, determine whether the employer is treated with other members of these groups as a single employer for purposes of applying the IRC 415 limits. If other members are to be taken into account, determine the same information for their plans as that determined for the employer.
- (3) If an employee currently participating in a DB plan of the employer has also participated in another ongoing or terminated plan(s) of the same employer (or of an employer treated as the same employer for purposes of IRC 415 testing), aggregate benefits, service and participation under these plans for purposes of applying the IRC 415(b) limits.
- (4) What is the limitation year for each plan? If the employer has elected to use a 12-consecutive month period other than the calendar year, was the election effected by one of the three methods discussed under the definition of limitation year (i.e., separate written resolution, adoption of a plan with a limitation year other than a calendar year, or adoption of a plan amendment changing the limitation year)?

4.72.6.3 (12-01-2002)
**IRC 415(b)
 Limits**

- (1) IRC 415(b) provides, in general, that benefits with respect to a participant exceed the IRC 415(b) limits if, when expressed as an annual benefit (within the meaning of IRC 415(b)(2)), such annual benefit is greater than the lesser of:

- a. \$90,000, or
 - b. 100% of the participant's average compensation for his/her high-3-years.
- (2) The IRC 415(b)(1)(A) limitation is often referred to as the DB "dollar limitation" while the IRC 415(b)(1)(B) limitation is often called the DB "compensation limitation."
- (3) Under SBJPA, effective for limitation years beginning after December 31, 1994, the DB compensation limitation does not apply to governmental plans (as defined in IRC 414(d)). (EGTRRA increased the DB dollar limitation of IRC 415(b)(1)(A) to \$160,000, effective for limitation years ending after December 31, 2001. EGTRRA also provided that the DB compensation limitation does not apply to multiemployer plans (as defined in section 414(f)) for limitation years beginning after December 31, 2001.)

4.72.6.3.1 (12-01-2002)
**Cost of Living
Adjustments
(COLAs)**

- (1) IRC 415(d) provides that the IRC 415(b)(1)(A) dollar limitation is adjusted annually by the Secretary of the Treasury to take into account increases in the cost-of-living, with the adjusted limitation effective as of January 1 of a calendar year and applicable to limitation years that end with or within that calendar year.
- a. The adjusted dollar limitation is applicable to participants in a DB plan and to employees who have retired or otherwise terminated their service under the plan with a nonforfeitable right to accrued benefits, regardless of whether they have actually begun to receive such benefits.
 - b. However, the annual benefit payable to a terminated participant that is otherwise limited by the DB dollar limitation may be increased in accordance with COLAs to the DB dollar limitation, **but only if the plan specifically provides for such post-retirement adjustments.**
- (2) While a DB plan may include a provision that automatically adjusts the maximum dollar limitation for changes in the cost-of-living, the provision may only provide for scheduled increases that become effective as provided in IRC 415(d) no sooner than January of each calendar year. Stated differently, increases in the dollar limitation may not be anticipated. See Reg. 1.415-5(a).
- (3) The DB dollar limitations in effect from ERISA through 2001 are given below. As indicated, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) imposed a 3-year freeze on the COLAs to the DB dollar limitation, beginning in 1983, and the Tax Reform Act of 1984 (TRA '84) extended the freeze on COLAs until 1/1/88. (EGTRRA increased the DB dollar limitation of IRC 415(b)(1)(A) to \$160,000, effective for limitation years ending after December 31, 2001.)

IRC 415(b)(1)(A) Dollar Limitations	
Limitation added by ERISA	\$ 75,000
1/1/76	\$ 80,475
1/1/77	\$ 84,525
1/1/78	\$ 90,150
1/1/79	\$ 98,100
1/1/80	\$110,625
1/1/81	\$124,500
1/1/82	\$136,425
1/1/83 - - 1/1/87	\$ 90,000
1/1/88	\$ 94,023
1/1/89	\$ 98,064
1/1/90	\$102,582
1/1/91	\$108,963
1/1/92	\$112,221
1/1/93	\$115,641
1/1/94	\$118,800
1/1/95 - - 1/1/96	\$120,000
1/1/97	\$125,000
1/1/98 - - 1/1/99	\$130,000
1/1/2000	\$135,000
1/1/2001	\$140,000
1/1/2002 - - 1/1/2003	\$160,000

- (4) In certain circumstances the DB compensation limitation applicable to a participant who has separated from service with a nonforfeitable right to an accrued benefit may be adjusted annually to take into account cost-of-living increases.
- Specifically, where the annual benefit payable to a terminated participant is limited by the compensation limitation and **where the plan specifically provides for such post-termination adjustments**, the compensation limitation applicable to the participant in the limitation year he/she separated from service may be adjusted. See Reg. 1.415-5.
 - GATT provided that, for participants who have separated from service, the amount taken into account under IRB 415(b)(1)(B) (the DB compensation limitation) is adjusted annually for increases in the cost-of-living by the Secretary. The factors used to adjust the DB compensation limitation applicable to such separated participants are published by the Service as part of the cost-of-living adjustments

under IRC 415(d). (The first factor provided by the Service was included in Rev. Rul. 95-29.) The compensation limitation applicable to such an individual for a calendar year is calculated by multiplying the compensation limitation applicable to the individual, as adjusted under prior law through the prior calendar year, by the factor provided by the Service for that year.

- c. The factors used to adjust the DB compensation limitation applicable to a participant who separated from service before January 1 of the calendar years from 1995 through 2001 are given below.

1995	1.0217
1996	1.0264
1997	1.0294
1998	1.0220
1999	1.0160
2000	1.0235
2001	1.0351
2002	1.0270
2003	1.0159

- (5) For individuals whose benefits under a plan are limited by IRC 415(b) and the plan provides for the escalation of benefits as the IRC 415(b) DB dollar limitation is increased, benefits may only be increased beginning in the year the increased IRC 415(b) limit becomes effective, and benefits for prior years are not retroactively increased because of benefit increases in the current year.
- (6) For purposes of calculating a single-sum distribution of a participant's benefit, COLA increases in the dollar limitation and the compensation limitation must not be anticipated.
- a. Where a plan formula provides that a participant's benefit is increased each year by a COLA which is a function of the Consumer Price Index (CPI), a participant receiving their benefit in the form of a single sum must receive projections of the CPI increases (based on reasonable actuarial assumptions) as part of their single sum, but only to the extent the single sum does not exceed the actuarial present value of the lesser of the current dollar limitation or current compensation limitation applicable to the participant.

Example 3: Company A has a DB plan, Plan Z, with a plan year and limitation year that both end on 6/30. What is the DB dollar limitation applicable to a participant in Plan Z for the limitation year ending 6/30/98?

Solution. The dollar limitation applicable to the 7/1/97 - 6/30/98 limitation year is \$130,000. The adjusted dollar limitation effective 1/1/98, is applicable to limitation years that end during the calendar year 1998. See Reg. 1.415-3(a)(2).

Example 4: A DB plan, Plan Y, with a calendar year plan year and limitation year was terminated on 8/10/96, but was not able to make single-sum distributions to participants until February 1997. Which adjusted dollar limitation will be used for purposes of calculating the maximum single sum-distribution that can be distributed to a Plan Y participant?

Solution. The dollar limitation in effect on the date of termination (\$120,000) would be used for calculating the maximum accrued benefit under the plan in an optional form, i.e., the maximum single sum which can be distributed. If the plan provides for interest on late distributions, the amount may be increased accordingly.

Example 5: In 1997, Mr. Burton retired from Plan K, a DB plan, at his social security retirement age (SSRA) of 65. His benefit at retirement age, prior to limitation for IRC 415(b), was \$150,000 per year, payable as a joint and 50% survivor annuity. Mr. Burton's benefit in 1997 was limited by the IRC 415(b) dollar limitation to \$125,000. The terms of Mr. Burton's plan provide for the use of the adjusted dollar limitation under IRC 415(b) and (d), but do not provide for automatic post-retirement benefit increases as the IRC 415 dollar limitation increases. However, in 1998, the plan is amended to provide for a 2% COLA adjustment for retiree benefits. Under the terms of the plan, ad hoc COLA adjustments for retirees are calculated using benefits under the plan formula, prior to limitation for IRC 415. How will this affect Mr. Burton's benefit in 1998?

Solution. In 1998, Mr. Burton can receive a 2% increase in his benefit, provided the increase will not cause the 1998 IRC 415(b) limitation to be exceeded. Therefore, in 1998 Mr. Burton's benefit would be computed as \$153,000 ($1.02 \times \$150,000$) which would then be limited to \$130,000, the 1998 IRC 415(b) dollar limitation. (Note that, keeping all other plan terms the same, without the ad hoc COLA adjustment Mr. Burton's benefit would remain at \$125,000.)

4.72.6.3.1.1 (12-01-2002)

**Examination
Steps**

- (1) Is the correct IRC 415(b) dollar limitation being used for purposes of applying the IRC 415 limits? Where a DB plan is terminated in one limitation year and benefits in the form of a single sum are not distributed until the following limitation year, is the correct IRC 415(b) limit (the limitation in effect at the time of termination) used for demonstrating that IRC 415 limits are satisfied?
- (2) Where benefits of retired participants (with benefits limited by either the DB dollar limitation or the DB compensation limitation) are increased as the IRC 415(b) limitation increases, do the terms of the plan specifically provide for such post-retirement increases?

4.72.6.3.2 (12-01-2002)

**Average
Compensation
for High-3 Years**

- (1) The IRC 415(b)(1)(B) compensation limitation uses a participant's average compensation for his/her high-3-years, with a participant's "high-3-years" described in IRC 415(b)(3) as the period of consecutive calendar years (not more than 3) during which the participant both was an active participant in the plan and had the greatest aggregate compensation from the employer.
- (2) Reg. 1.415-3(a)(3) provides that a participant's high-3-years of service is the period of 3 consecutive calendar years (or, the actual number of consecutive years of employment for those employees who are employed for less than 3 consecutive years with the employer) during which the employee had the greatest aggregate compensation (as defined in Reg. 1.415-2(d)) from the employer.

Note: Because the regulations allow the use of a participant's high-3-consecutive years of **service** (rather than **participation**), if such high-3-years occur before the plan's effective date or before the employee becomes an active participant in the plan, use of such high-3-years will not cause the plan to fail to satisfy the requirements of IRC 415(b). In determining a participant's high-3-years, the plan may use any 12-month period instead of the calendar year provided it is uniformly and consistently applied.

- (3) While the terms of a plan may provide a different definition of compensation for purposes of calculating the rate of employer contributions or the benefit accrual, a definition of compensation within the meaning of IRC 415(c)(3) must be used to determine whether the maximum permissible contributions or benefits have been exceeded.
 - a. A plan that incorporates IRC 415 by reference must specify which definition of compensation is incorporated. Compensation used for IRC 415 purposes is defined in Reg. 1.415-2(d) and discussed in detail in the IRC 415(c) Examination Guideline.
 - b. SBJPA amended IRC 415(c)(3) to provide that, for years beginning after December 31, 1997, compensation for IRC 415 purposes includes any elective deferral (as defined in section 402(g)(3)), and any amount that is contributed or deferred by the employer at the election of the employee and that is not includible in the gross income of the employee by reason of IRC 125 or IRC 457. For limitation years beginning after December 31, 2000, compensation for IRC 415 purposes also includes any elective amounts that are not includible in the gross income of the employee by reason of IRC 132(f)(4). Reg. 1.415-2(d) has not yet been updated to reflect these changes in IRC 415(c)(3).
- (4) IRC 401(a)(17), added by TRA '86, imposes an annual compensation limit on the amount of compensation a qualified plan can take into account in determining allocations in a DC plan, or benefit accruals in the case of a DB plan.

Note: The percentage of compensation limitations of IRC 415(b) and IRC 415(c) are based upon the actual IRC 415(c)(3) compensation, without regard to the IRC 401(a)(17) compensation limit. However, the benefits

and contributions to which the IRC 415 limits are applied cannot be based on compensation in excess of the IRC 401(a)(17) compensation limit. [Note that where a plan does not incorporate IRC 415 by reference and defines compensation for all purposes under the plan as compensation not in excess of the IRC 401(a)(17) compensation limit, the 100 percent of high three-year average compensation limitation used under the plan will use compensation as defined under the plan, and the plan's compensation limitation will be more restrictive than the IRC 415(b) and 415(c) compensation limitations.]

Example 6: Mr. Holler commenced employment on 1/1/95, at age 55, and began participating immediately in his employer's DB plan (Plan M). The benefit at normal retirement age (65) under Plan M (before limitation for IRC 415(b)) is years of service (not to exceed 10) times 10% times final average compensation, where final average compensation is calculated using the participant's high-3 consecutive years average compensation. Mr. Holler's 1995 compensation is \$200,000. What compensation amounts would be taken into account in 1995 in determining Mr. Holler's benefit and the IRC 415(b)(1)(B) compensation limitation applicable to this benefit?

Solution. In calculating the benefit under the plan formula in 1995, the compensation would be limited by the 1995 IRC 401(a)(17) compensation limit to \$150,000. Thus, after 1 year of service, Mr. Holler's benefit under the plan formula, payable at normal retirement age, prior to limitation for IRC 415, would be \$15,000 [$1 \times 10\% \times \$150,000$]. The IRC 415(b)(1) limitation applicable to Mr. Holler's benefit would be the lesser of the IRC 415(b)(1)(A) dollar limitation or the IRC 415(b)(1)(B) compensation limitation. The compensation limitation applicable to Mr. Holler would be calculated taking his actual compensation (\$200,000) into account.

4.72.6.3.2.1 (12-01-2002)

Examination Steps

- (1) Is an IRC 415(c)(3) definition of compensation used under the plan for purposes of determining whether the limitations of IRC 415 have been exceeded? Does the plan specify which definition is used for purposes of determining the IRC 415(c)(3) compensation?
- (2) Are elective deferrals treated appropriately in determining the compensation used for IRC 415 testing (i.e. IRC 415(c)(3) compensation)?
 - a. Are amounts which are deferred and not includible in gross income under IRC 125 plans, 401(k) plans, 403(b) plans, 408(k) plans, and 457 plans excluded from compensation for IRC 415 testing for limitation years beginning before 1998?
 - b. For limitation years beginning after December 31, 1997, does compensation for IRC 415 purposes include any elective deferral as defined in section 402(g)(3) (which includes elective deferrals under 401(k), 403(b), and 408(k) plans), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of IRC 125 or IRC 457?

- c. For limitation years beginning after December 31, 2000, does compensation for IRC 415 purposes include any elective amounts that are not includible in the gross income of the employee by reason of IRC 132(f)(4)?
- (3) Is the employee's compensation from all members of a controlled group (or from all members of an affiliated service group) taken into account?
- (4) For the IRC 415(b) percentage of compensation limitation, is average compensation for a participant's high-3 years calculated correctly? Remember, while a participant's benefits cannot be based on compensation in excess of the IRC 401(a)(17) compensation limit, the IRC 415(b) compensation limitation is based on actual IRC 415(c)(3) compensation.

4.72.6.3.3 (12-01-2002)
Annual Benefit

- (1) IRC 415(b)(1) limits the "annual benefit" which may be provided by a qualified plan. Annual benefit is further defined in IRC 415(b)(2)(A) as a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in IRC 402(a)(5), 403(a)(4) and 408(d)(3)) are made.
- (2) Unlike a DC plan which limits the amount of annual additions which may be made to the account of a participant in any given year, a DB plan must limit the annual benefit that may accrue or be paid at any time to a participant. In determining the annual benefit, benefits attributable to certain amounts are not taken into account:
 - a. Mandatory or voluntary employee contributions;
 - b. Rollover contributions (as defined in IRC 402(a)(5), 403(a)(4), and 408(d)(3)); and
 - c. Assets or liabilities transferred from one qualified plan to another. See Reg. 1.415-3(b).

Note: The limitation on benefits is a maximum against which the plan's annual benefit is compared, and annual benefit refers to a retirement income benefit payable annually in the form of a straight life annuity. The test is applied by comparing the participant's retirement benefit under the plan to the maximum annual benefit that could be paid to the participant under IRC 415(b). Where a DB plan provides a retirement benefit in any form other than a straight life annuity, the plan benefit is adjusted to a straight life annuity that is the actuarial equivalent of such benefit under rules provided in IRC 415(b)(2), Reg. 1.415-3, and Rev. Rul. 98-1, 1998-1 C.B. 249 (for limitation years ending after December 31, 2001, see also Q&A-3 of Rev. Rul. 2001-51, 2001-45 I.R.B. 427). Therefore, to test a DB plan under IRC 415, the plan's retirement benefit is actuarially adjusted to the same form as the annual benefit described in IRC 415, and the annual benefit limitation must be adjusted such that it commences at the same time as the retirement benefit.

4.72.6.3.4 (12-01-2002)

**Adjustments to
Benefits and
Limitations**

- (1) Following are examples of plan benefits payable in a form other than a straight life annuity and indicate whether all or a portion of each benefit is taken into account when determining the "annual benefit" limited by IRC 415(b). Also provided are examples demonstrating--
 - a. adjustments to the DB dollar limitation where benefits commence before or after a participant's SSRA (for limitation years ending before 2002), and
 - b. certain other adjustments.

4.72.6.3.4.1 (12-01-2002)

**NO Adjustments
Required**

- (1) Benefits for which no adjustments are required include--
 - a. Ancillary benefits;
 - b. Qualified joint and survivor annuities; and
 - c. Post-Retirement Cost-of-Living Increases.

4.72.6.3.4.1.1 (12-01-2002)

**Ancillary
Benefits**

- (1) IRC 415(b)(2)(B) provides in part that any ancillary benefit that is not directly related to retirement income benefits is not taken into account when adjusting the plan benefit for other forms of benefit for purposes of complying with the DB plan limitations. See also Reg. 1.415-3(b)(2).
- (2) Examples of ancillary benefits not directly related to retirement benefits. See Reg. 1.415-3(c)(2).
 - a. Payment of medical expenses (or insurance premiums for such expenses).
 - b. Pre-retirement life insurance protection and lump-sum death benefits.
 - c. Sickness, accident, hospitalization and medical expenses for retired employees, their spouses and dependents under IRC 401(h).
 - d. Disability benefits not in excess of the qualified disability benefit. (A qualified disability benefit is defined in IRC 411(a)(9) as a disability benefit that does not exceed the benefit that would be provided for the participant if he/she separated from service at normal retirement age.)
- (3) **Note:** A plan providing such benefits will not be required to take them into account when determining whether the IRC 415(b) limits have been exceeded.

4.72.6.3.4.1.2 (12-01-2002)

**Qualified Joint
& Survivor
Annuity**

- (1) No adjustment is required for a benefit payable as a qualified joint and survivor annuity (QJSA) to the extent the value of such annuity exceeds the sum of the values of:
 - a. A straight life annuity beginning on the same date, and
 - b. Any post-retirement death benefits that would be payable even if the annuity was not in the form of a joint and survivor annuity.

Example 7: A DB plan (Plan A) provides for an annual benefit of 100% of final average compensation, not to exceed the lesser of the IRC 415(b) dollar or compensation limitations. A participant of Plan A, Mrs. Jones, retires in 1999 at her SSRA and has her benefit limited by IRC 415(b)(1) to \$130,000. This participant is married at the time benefits commence, and the plan will pay an annuity of 100% of compensation (up to \$130,000) during her lifetime, and should she die, a qualified survivor annuity of the same amount will be provided during her spouse's lifetime. This plan formula would meet the IRC 415(b) limits because the spouse's benefit is not considered an additional benefit for IRC 415 purposes, since it is a QJSA.

(If, however, the plan included a 10-year certain feature providing that 100% of compensation was payable during the participant's lifetime and her spouse's lifetime, should she die--but in no event, for a period shorter than 10 years--the formula would not satisfy IRC 415(b). The 10-year certain feature would make this benefit more valuable than a simple joint and survivor annuity, and the full dollar limitation of \$130,000 could not be provided.)

Note: Where a plan provides that the normal form of benefit distribution is a straight life annuity, married participants automatically receive a QJSA option (which may or may not be subsidized), and also provides for elective single-sum distributions, the maximum single sum which may be distributed to any married participant who elects a single sum is the actuarial equivalent of the maximum allowable straight life annuity, not the actuarial equivalent of the maximum allowable joint and survivor annuity. The increased benefit provided by a joint and survivor annuity for which no adjustments are made is available only if such benefit is paid as a joint and survivor annuity. All other forms of benefit are limited to the actuarial equivalent of the maximum allowable straight life annuity benefit. Note, however, that if the normal form under the plan is a qualified joint and 100 percent survivor annuity and the participant elects to receive a single sum, a forfeiture under IRC 411 will occur because the participant would be limited under IRC 415 to the single-sum equivalent of the maximum allowable straight life annuity. Conversely, if the plan provides the single-sum equivalent of the maximum allowable joint and 100 percent survivor annuity in order to avoid a forfeiture under IRC 411, the benefit would exceed the limitations of IRC 415. Therefore, a plan must be drafted to avoid these possibilities.

- (2) Where a plan provides that the amount of a participant's benefit to be paid in the form of a joint and survivor annuity is calculated by applying a reduction factor to the participant's single life annuity benefit under the plan formula, the terms of the plan may provide that the reduction factor is applied before the IRC 415 limit is applied.

Example 8: Mr. Jones, after 25 years of participation in a DB plan, Plan Z, will retire and commence receiving benefits in 1997 at his SSRA of 65. Under Plan Z, Mr. Jones' benefit, paid as a single life annuity, is \$150,000 before the application of IRC 415(b). If Mr. Jones' benefit is paid as a joint and 50% survi-

vor annuity, the plan provides that an 85% reduction factor is applied to the single life annuity benefit, before limitation for IRC 415(b). The plan further provides that the survivor portion of a participant's benefit, when in the form of a joint and 50% survivor annuity, is computed using the participant's benefit, reduced for the joint and survivor form, but prior to the application of IRC 415(b), provided the survivor portion does not exceed the benefit payable to Mr. Jones, after limitation for IRC 415(b).

Mr. Jones' benefit in the form of a joint and 50% survivor annuity would be calculated as \$127,500 ($\$150,000 \times 85\% = \$127,500$), which would then be limited by IRC 415(b) to a \$125,000 joint and survivor annuity. The survivor portion of the annuity will be computed as 50% of \$127,500, or \$63,750.

Note: Of course, under the top-heavy rules this is a nonproportional subsidy (unless the group to which the subsidy applies would independently satisfy the requirements of IRC 410(b)). See Q&A T-26 and T-27 of Reg. 1.416-1, and also the examination guidelines on top-heavy plans.

4.72.6.3.4.1.3 (12-01-2002)

**Post-Retirement
Cost-of-Living
Increases**

- (1) No adjustment is required for the value of benefits which reflect post-retirement cost-of-living increases, if these are made in accordance with the regulations. See 4.72.6.3.1.

4.72.6.3.4.2 (12-01-2002)

**Adjustments
Are Required**

- (1) Benefits for which adjustments are required include--
- a. Other forms of benefit; and
 - b. Employee contributions.

4.72.6.3.4.2.1 (12-01-2002)

**Other Forms Of
Benefit**

- (1) Where a DB plan provides a benefit other than in the form of a straight life annuity an adjustment is required (except for those benefits previously discussed for which no adjustment is required). Such form of benefit must be adjusted to an actuarially equivalent straight life annuity beginning at the same age at which the plan benefit is to be received.
- (2) Prior to amendment by the Uruguay Round Agreements Act, Public Law 103-465 (GATT), as amended by the Small Business Job Protection Act of 1996, Public Law 104-188 (SBJPA), IRC 415(b)(2)(E)(i) provided that the interest rate assumption used for purposes of adjusting the benefit where the benefit is payable other than in the form of a straight life annuity must not be less than the greater of 5% or the rate specified in the plan. The specified plan rate is the rate used under the plan for actuarial equivalence for that specific benefit form. (The mortality table used for adjustments under IRC 415(b)(2) is generally the table used for actuarial equivalence for the specific benefit form under the plan, but the plan is permitted to specify another reasonable mortality table for this purpose.)

Note: Some plans may specify different interest rates (or mortality tables) for different benefit forms.

Example 9: Mr. Burns will retire in 1994 at age 65, his SSRA, after 20 years of participation in a DB plan, Plan W. Plan W provides that participants may elect to receive their benefit in the form of a single sum which is the actuarial equivalent of their annual benefit under the Plan, calculated using the UP-1984 Mortality Table and 4%. Using these assumptions, Mr. Burns' benefit in the form of a single sum, before limitation for IRC 415, is \$750,000. Mr. Burns' high-3 average compensation is \$135,000.

How is the IRC 415(b) limit applied to his single sum benefit? (This is an example of an adjustment for form of benefit.)

Solution. Mr. Burns' high-3 average compensation exceeds the 1994 dollar limitation (\$118,800), so the dollar limitation is the limitation that will apply to Mr. Burns' benefit. Because a single sum is a form of benefit other than a straight life annuity for which an adjustment is required, the single sum must be converted to an equivalent single life annuity commencing at the same age for purposes of applying the IRC 415 limits. The actuarial assumptions, which would be used for these purposes in 1994, would be the mortality table used under the plan for single sums and an interest rate that is the greater of 5% or the rate used under the plan for single sums (4%). Thus, the UP-1984 Table and 5% would be used to derive an age 65 annuity factor equal to the cost of a \$1 per year life annuity, paid monthly, which is 10.036.

The single sum (\$750,000) is then divided by the annuity factor (10.036) to obtain an equivalent single life annuity of \$74,730.97. Mr. Burns' benefit, expressed as an "annual benefit" (\$74,730.97), must not (and does not) exceed the IRC 415(b) limit applicable to Mr. Burns in 1994 (\$118,800). Therefore, Mr. Burns' single sum benefit satisfies IRC 415(b).

4.72.6.3.4.2.1.1 (12-01-2002)

**GATT Changes
Assumptions
Used For Form
Adjustments**

- (1) GATT (section 767(b)) amended IRC 415(b)(2)(E)(i), (ii), and (iii), to provide in general that **where the form of benefit is not subject to IRC 417(e)(3)**, for purposes of adjusting the benefit or any limitation under IRC 415(b)(2)(B) or (C), the interest rate assumption must not be less than the greater of 5 percent or the rate specified in the plan. **Where the form of benefit is subject to IRC 417(e)(3)**, for purposes of adjusting the benefit or any limitation under IRC 415(b)(2)(B) or (C), the applicable interest rate (as defined in IRC 417(e)(3)) is substituted for 5 percent. That is, **where the form of benefit is subject to IRC 417(e)(3)**, the interest rate used to adjust the benefit or limitation must not be less than the greater of the applicable interest rate or the plan rate. IRC 415(b)(2)(E)(v), added by GATT, provides that for purposes of adjusting any benefit or limitation under IRC 415(b)(2)(B), (C), or (D), the mortality table prescribed by the Secretary for IRC 417(e)(3) must be used (the applicable mortality table).
- (2) The GATT amendments to IRC 415(b)(2)(E) were generally effective as of the first day of the first limitation year beginning in 1995, although an employer could elect to treat the changes as being effective on or after December 8, 1994. GATT also provided that a participant's accrued benefit would not be considered to be reduced in violation of IRC 411(d)(6) where such reduction results solely from the application of the

IRC 415(b)(2)(E) changes. Although a participant's accrued benefit is permitted to be reduced, section 767(d)(3) of GATT provided that an accrued benefit is not required to be reduced below the accrued benefit as of the last day of the last plan year beginning before January 1, 1995. Thus, an employee's accrued benefit as of the last day of the last plan year beginning before 1995 could be (but was not required to be) protected. Rev. Rul. 95-29, 1995-1 C.B. 81, provided guidance in the form of questions and answers on the limitations on benefits and contributions under IRC 415 as amended by GATT.

- (3) Section 417(e)(3) provides rules regarding the actuarial assumptions to be used to determine the present value of a participant's accrued benefit. GATT amended section 417(e)(3) to provide a specific mortality table and changed "the applicable interest rate" that must be used to determine the present value of a benefit subject to section 417(e)(3). The applicable interest rate specified in section 417(e)(3) is the annual interest rate on 30-year Treasury securities as specified by the Commissioner. Benefits subject to section 417(e)(3) include all forms of benefit except benefits payable in the form of an annual benefit that does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of the survivor annuitant), or the cessation or reduction of Social Security supplements or qualified disability benefits (as defined in section 411(a)(9)). (See section 417(e)(3) and the regulations thereunder to determine whether a form of benefit is subject to section 417(e)(3).)

(For examples where benefits and/or limitations are adjusted during the period following the effective date of the GATT IRC 415(b)(2)(E) changes and prior to the amendment of GATT by SBJPA, the agent should consult Chapter 2 of Employee Plans CPE Technical Topics for 1998, or consult the area actuary.)

4.72.6.3.4.2.1.2 (12-01-2002) SBJPA Amends GATT

- (1) SBJPA (section 1449(b)) amended GATT to provide that whether or not the benefit is subject to IRC 417(e)(3), adjustments to the limitation under IRC 415(b)(2)(B), (C), or (D) only take 5 percent and the rate specified in the plan into account in determining the interest rate to be used for purposes of the adjustment. **Thus, the applicable interest rate is not used to adjust the DB dollar limitation.** The applicable interest rate is used to adjust the benefit where the benefit is in a form subject to IRC 417(e)(3). The applicable mortality table is taken into account for all adjustments under IRC 415(b)(2)(B), (C), and (D). The applicable mortality table is currently set forth in Rev. Rul. 95-6, 1995-1 C.B. 80. Section 1449(c) of SBJPA provided that the amendments made by sections 1449(a) and (b) are effective as if included in the provisions of section 767 of GATT. Rev. Rul. 98-1, 1998-1 C.B. 249, provides guidance in the form of questions and answers on the limitations on benefits and contributions under section 415 as amended by GATT and taking into account the applicable provisions of SBJPA, after technical correction made by the Taxpayer Relief Act of 1997 (TRA '97). **This revenue ruling modifies and supersedes Rev. Rul. 95-29.**

- (2) Section 1449(a) of SBJPA amended section 767(d)(3) of GATT to provide that plans adopted and in effect before December 8, 1994, are not required to apply the IRC 415(b)(2)(E) changes (as amended by SBJPA) with respect to benefits accrued before the earlier of (i) the date a plan amendment applying the IRC 415(b)(2)(E) changes is adopted or made effective, whichever is later, or (ii) the first day of the first limitation year beginning after December 31, 1999. Determinations under IRC 415(b)(2)(E) before such earlier date shall be made with respect to such benefits on the basis of IRC 415(b)(2)(E) and the provisions of the plan as in effect on December 7, 1994 (but only if such provisions of the plan meet the requirements of IRC 415 as in effect on December 7, 1994). Rev. Rul. 98-1 provides guidance on the SBJPA transition rules regarding the application of the IRC 415(b)(2)(E) changes. These rules and others are discussed in 4.72.6.3.4.3.4, Transition Rules After SBJPA/Rev. Rul. 98-1.
- (3) Sponsors of plans adopted and in effect before December 8, 1994, who amended their plans for GATT changes to IRC 415(b)(2)(E) prior to August 20, 1996, (SBJPA enactment date) were permitted by SBJPA to amend the plan to repeal such amendment within one year of the enactment of SBJPA. This period was extended by section 3.03 of Rev. Proc. 99-23 to the last day of the first plan year beginning on or after January 1, 2000. The period was further extended to the last day of the first plan year beginning on or after January 1, 2001, by section 4 of Rev. Proc. 2000-7. Thus, prior to the end of the remedial amendment period, an employer adopting a repealing amendment to a plan has the same options for that plan as an employer that has not made any plan amendments to apply the IRC 415(b)(2)(E) changes.

Example 10

Plan A, a DB plan with a normal retirement age of 65, provides that single-sum distributions are determined as the actuarial present value of the annual straight life annuity payable at the actual retirement date. Prior to GATT, Plan A provides that a single sum is determined using the 83 IAM (Male) Mortality Table and 6% interest, but must be at least as great as the single sum calculated using the IRC 417(e) interest rates. The 83 IAM (Male) table is also used for purposes of IRC 415(b) adjustments under the Plan.

Following GATT as amended by SBJPA, Plan A is amended to provide that a single sum is determined as the greater of the single sums determined using (1) 83 IAM (Male) and 6%, and (2) the applicable interest rate and the applicable mortality table. The Plan has been amended to apply the IRC 415(b)(2)(E) changes to all accrued benefits for all participants under the Plan. Assume that the applicable interest rate is 8%.

Participant M, whose SSRA is age 65, retires at age 65 from Plan A and elects to receive a distribution in the form of a single sum. Both before and after GATT, the largest single sum is equal to \$950,000 (the \$950,000 single sum determined using the 83 IAM Mortality Table and 6% interest exceeded the single sums determined using the other stated assumptions to be taken into account in determining single sums).

Example 10

How are the IRC 415(b) limitations applied to M's benefit? (This is an example of adjustment for form of benefit.)

Solution prior to GATT.

Step 1: the \$950,000 is converted to a straight life annuity by dividing it by an age 65 annuity factor (10.576), determined using the 83 IAM table and 6% (the greater of 5% and the plan's rate), as shown below.

$$\$950,000 / 10.576 = \$89,826$$

Step 2: the applicable §415(b) limitation, the lesser of the dollar limitation and the compensation limitation applicable to M's benefit, is determined.

Step 3: M's equivalent annual benefit (\$89,826) must not exceed the applicable limitation. Limit as necessary.

Solution after GATT as amended by SBJPA.

Step 1: Convert the \$950,000 to an equivalent straight life annuity, in two separate calculations:

(i) \$950,000 is divided by an immediate annuity purchase rate (10.576) determined using 83 IAM and 6%, the plan assumptions for actuarial equivalence for single sums;

$$\$950,000 / 10.576 = \$89,826$$

(ii) \$950,000 is divided by an immediate annuity purchase rate (9.196) determined using the applicable interest rate (8%) and the applicable mortality table:

$$\$950,000 / 9.196 = \$103,306$$

The equivalent annual benefit for purposes of IRC 415 is the greater of (i) and (ii), which is \$103,306.

Step 2: Determine the applicable IRC 415(b) limit, the lesser of the applicable dollar limitation and the applicable compensation limitation.

Step 3: The equivalent annual benefit (\$103,306) must not exceed the applicable limit. Plan language must preclude an accrual in excess of the limit.

Example 11

Plan R, a DB plan, provides that the normal form of pension is a 10-year certain and life annuity. Actuarial equivalence for all purposes under the Plan is based on the 83 IAM (Male) Mortality Table and 6% interest. Following SBJPA, the Plan was amended to apply the IRC 415(b)(2)(E) changes to all accrued benefits for all participants under the Plan.

Participant P, whose SSRA is age 65, retires at age 65 from Plan A and elects to receive the plan benefit equal to (prior to application of IRC 415) a \$120,000 per year 10-year certain and life annuity.

How are the IRC 415(b) limitations applied to P's benefit? (This is an example of adjustment for form of benefit.)

Solution prior to GATT.

Example 11

Step 1: the 10-year certain and life annuity is converted to an equivalent straight life annuity commencing at the same age using the 83 IAM table and 6% (the greater of the plan rate and 5%). This is accomplished by converting the 10-year certain and life annuity to a lump sum by multiplying \$120,000 by the annuity purchase rate for an age 65 10-year certain and life annuity (11.132), and then converting the lump sum to a straight life annuity by dividing it by the purchase rate for an age 65 straight life annuity (10.576).

$$(\$120,000 \times 11.132) / 10.576 = \$126,309$$

The equivalent annual benefit payable at age 65 as a straight life annuity is equal to \$126,309.

Step 2: Determine the applicable IRC 415(b) limit, the lesser of the applicable dollar limit or the applicable compensation limit.

Step 3: The equivalent annual benefit must not exceed the applicable limitation. Plan language must preclude an accrual in excess of the limit.

Solution after GATT as amended by SBJPA.

Step 1: Convert the 10-year certain and life annuity to a straight life annuity. (Note that this benefit is a nondecreasing annuity benefit and is not subject to §417(e)(3).)

(i) Using the plan's definition of actuarial equivalence, the \$120,000 10-year certain and life benefit is converted to an equivalent straight life annuity, using annuity factors (based on 83 IAM and 6%) for an age 65 10-year certain and life annuity and an age 65 straight life annuity.

$$(\$120,000 \times 11.132) / 10.576 = \$126,309$$

(ii) Using 5% interest and the applicable mortality table, the 10-year certain and life benefit is converted to a straight life annuity. The applicable annuity factors are 12.079 (annuity factor for an age 65 10-year certain and life annuity) and 11.534 (age 65 straight life annuity factor).

$$(\$120,000 \times 12.079) / 11.534 = \$125,670$$

The equivalent annual benefit payable as a straight life annuity is equal to the greater benefit, \$126,309.

Step 2: Determine the applicable IRC 415(b) limit.

Step 3: The equivalent annual benefit must not exceed the applicable limitation. Plan language must preclude an accrual in excess of the limit.

4.72.6.3.4.2.2 (12-01-2002) (1) Adjustments for employee contributions are described.

**Employee
Contributions**

4.72.6.3.4.2.2.1 (12-01-2002) (1) **Mandatory Contributions** When a DB plan provides for mandatory contributions, the annual benefit attributable to such contributions is not taken into account in testing the IRC 415(b) limitation on benefits. Therefore, when these contributions are not kept in a separate account, the portion of the annual benefit that is attributable to the mandatory contributions must be determined using the rules under IRC 411(c)(2)(B). The annual benefit minus the benefit attributable to mandatory employee contributions is the amount that cannot exceed the limitation on benefits under IRC 415(b).

- (2) In general, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's "accumulated contributions" (as defined under IRC 411(c)(2)(C)), expressed as an annual benefit commencing at retirement age.

4.72.6.3.4.2.2.2 (12-01-2002) (1) **Voluntary Contributions** Voluntary contributions are, generally, kept in a separate account with the participant having a nonforfeitable right to the actual account balance, including the participant's contributions plus any earnings on these contributions.

- (2) If voluntary contributions are used to purchase annuities to provide part of the benefit at retirement, the part of the total benefit provided by voluntary contributions is not subject to the IRC 415(b)(1) limitation.

4.72.6.3.4.2.2.3 (12-01-2002) (1) **Transfer of Assets or Liabilities** When there is a transfer of assets or liabilities from one qualified plan to another, the annual benefit attributable to the assets transferred does not have to be taken into account by the transferee plan in applying the IRC 415 limits. The annual benefit payable on account of the transfer for any individual that is attributable to the assets transferred will equal the annual benefit transferred on behalf of such individual multiplied by a fraction, the numerator of which is the total assets transferred and the denominator of which is the total liabilities transferred. See Reg. 1.415-3(b)(1)(iv).

Note: However, if both plans were maintained by the same employer, the benefits under both plans would have to be taken into consideration for purposes of applying the IRC 415 limits.

4.72.6.3.4.2.2.4 (12-01-2002) (1) **Rollover Contributions** Benefits attributable to rollover contributions that are kept in a separate account would not be subject to the IRC 415(b) limitation. If the rollover contributions are used to provide part of the benefit, the annual benefit attributable to these contributions is determined on the basis of reasonable actuarial assumptions and is not included in the annual benefit of the participant that is limited by IRC 415(b).

- (2) Benefits attributable to rollovers are treated by the transferee and transferor plans in the same way as any transfer of assets and liabilities.

That is, they are generally taken into account by the transferor plan rather than the transferee plan. See 4.72.6.3.4.2.2.3.

4.72.6.3.4.2.2.5 (12-01-2002) (1)
**Employee
Contributions as
Separate DC
Plan**

Reg. 1.415-3(d) provides that when a DB plan provides for either (or both) mandatory or voluntary contributions, these contributions are considered to be a separate DC plan subject to the IRC 415(c) limitation on annual additions.

- a. If the plan provides for employee contributions, the actual amount contributed is used in determining the annual addition.

Note: For limitation years beginning prior to 1/1/87, the amount of employee contributions, whether mandatory or voluntary, which is included in annual additions for that year is the lesser of (i) the amount of employee contributions in excess of 6% of the employee's compensation for the limitation year, or (ii) one-half of the employee contributions for that year. For limitation years beginning after 12/31/86, all employee contributions are included in annual additions.

- b. Furthermore, when a DB plan provides for employee contributions and as a result these contributions are considered a separate DC plan, the plans must then satisfy the 1.0 rule of IRC 415(e) for employers who maintain both a DB plan and a DC plan, for limitation years beginning prior to 2000.

4.72.6.3.4.2.2.6 (12-01-2002) (1)
**Unreasonable
Conversion Rate**

If rollover contributions are made to a DB plan, the annual benefit attributable to these contributions must be determined on the basis of reasonable actuarial assumptions, (e.g., interest rate, mortality table, or conversion rate specified by the plan). Using a conversion rate unreasonably favorable to the participant artificially reduces the employer provided portion of the benefit to which the IRC 415(b)(1) limits are applied. See Reg. 1.415-3(b)(1)(iii).

4.72.6.3.4.2.3 (12-01-2002)
**Examination
Steps**

- (1) Do any of the DB plans provide for voluntary or mandatory employee contributions?
- (2) If a plan provides for employee contributions, are the IRC 415(b) limits applied only to the employer provided portion of a participant's benefit? Is the portion of the benefit attributable to employee contributions calculated correctly?
- (3) Where a DB plan provides for employee contributions, are the employee contributions treated as a separate DC plan, and when aggregated with contributions under any other DC plans maintained by the employer, do the aggregated contributions satisfy IRC 415(c)? For limitation years beginning before 2000, do the DB and DC plans satisfy IRC 415(e)?

4.72.6.3.4.3 (12-01-2002)

**DB Limitations
Adjustments**

- (1) Adjustments must be made to the DB dollar limitation for early and late commencement of benefits. (EGTRRA changed the ages at which the DB dollar limitation must be adjusted for early and late commencement of benefits. Effective for limitation years ending after December 31, 2001: the dollar limitation is adjusted for commencement of benefits prior to age 62, and no adjustment is required for benefits that commence from age 62 to age 65; and the dollar limitation will be adjusted for late commencement where benefits commence after age 65.)

4.72.6.3.4.3.1 (12-01-2002)

**Benefits
Commence
Before SSRA**

- (1) If retirement income benefits under a plan commence before a participant's social security retirement age (SSRA), the determination of whether the limitation has been satisfied is made by reducing the dollar limitation so that such reduced limitation (beginning when such retirement income benefit begins) is equivalent to a \$90,000 annual straight life annuity benefit beginning at the participant's SSRA.
- a. The \$90,000 amount is adjusted as applicable under IRC 415(d). TRA '86 tied adjustments to the IRC 415(b) dollar limitation for early or late commencement of benefits to the SSRA, rather than to age 65 (and ages 62 and 55). These adjustments are further explained in Notice 87-21, 1987-1 C.B. 458.
 - b. Prior to TRA '86, early retirement adjustments were applicable only for ages under 62, and no adjustment was required for retirement between ages 62 and 65. No adjustment is made to the compensation limitation for early retirement.

(Under EGTRRA, effective for limitation years ending after December 31, 2001, early retirement adjustments are, again, applicable only for ages under 62, and no adjustment is required for retirement between ages 62 and 65. That is, adjustments for early retirement will no longer be tied to a participant's SSRA.)

- (2) For purposes of applying IRC 415, the SSRA is:

- a. 65 for a participant born before 1/1/38;
- b. 66 for a participant born after 12/31/37 and before 1/1/55 ;
- c. 67 for a participant born after 12/31/54.

- (3) **If benefits commence before a participant's SSRA, but on or after age 62,** the applicable dollar limitation is computed using the following reduction factors:

- a. If a participant's SSRA is 65, the DB dollar limitation for benefits commencing on or after age 62 is reduced by 5/9 of 1% for each month by which benefits commence before the month in which the participant attains age 65. See Q&A of Notice 87-21.
- b. If a participant's SSRA is greater than 65, the DB dollar limitation for benefits commencing on or after age 62 is reduced by 5/9 of 1% for each of the first 36 months and by 5/12 of 1% for each additional month (up to 24 months) by which benefits commence before the month of the participant's SSRA.

Example 12

Participant A's SSRA is 65 and A will commence receiving benefits under the plan immediately following the attainment of age 63. If the current limit under IRC 415(b)(1)(A) is \$108,963, what will this limit be as applied to A at age 63?

Solution. The benefit would commence 24 months before A's SSRA, and the reduction under the plan will be done as:

$$\begin{aligned} &108,963 - (108,963)[(5/9) \times (.01) \times (24)] \\ &= 108,963 - 14,528.40 \\ &= 94,434.60 \end{aligned}$$

The equation could also be written

$$\begin{aligned} &108,963 \times [1 - (5/9) \times (.01) \times (24)] \\ &= 108,963 \times [1 - (2/15)] \\ &= 108,963 \times [13/15] \\ &= 94,434.60 \end{aligned}$$

Example 13

Participant B has a SSRA of 66 and the plan NRA is 62. If the current IRC 415(b)(1)(A) limit is \$90,000. What is the dollar limitation applicable to B for commencing benefits at age 62?

Solution. At age 62 B's benefit would commence 48 months before B's SSRA. The reduction in the dollar limitation is as follows.

$$\begin{aligned} &90,000 - (90,000)[(5/9) \times (.01) \times (36) + (5/12)(.01)(12)] \\ &= 90,000 - (90,000)(25\%) \\ &= 90,000 - 22,500 \\ &= 67,500 \end{aligned}$$

For purposes of the 5/9 of 1% reductions, where the number of months by which the benefit commences early is equal to 1, 2, or 3 full years (i.e., the number of months is 12, 24, or 36), the 5/9 of 1% reductions are equivalent to 1/15, 2/15, and 3/15 which equals 1/5. For purposes of the 5/12 of 1% reductions, where the number of months is equal to 1 or 2 full years (i.e., the number of months is 12 or 24), these reductions are equivalent to 1/20, and 2/20 which equals 1/10.

Example 14 (Pre-GATT)

(This example is a variation of Example 9.) Mr. Burns will retire in 1994 at age 62, after 15 years of participation in a DB plan, Plan W. Plan W provides that participants may elect to receive their benefit in the form of a single sum that is the actuarial equivalent of their annual benefit under the Plan, calculated using the UP-1984 Mortality Table and 4%. Using these assumptions, Mr. Burns' benefit in the form of a single sum, before limitation for IRC 415, is \$650,000. Mr. Burns' high-3 average compensation is \$130,000, and his SSRA is 65. How is the IRC 415(b) limit applied to his single sum benefit?

Example 14 (Pre-GATT)

Solution: Two things must be done to test Mr. Burns' benefit for satisfaction of IRC 415(b): (1) Mr. Burns' single sum must be adjusted to an actuarially equivalent single life annuity commencing at the same age, using assumptions which satisfy IRC 415(b)(2)(E); and (2) the IRC 415(b) dollar limitation must be adjusted for commencement of benefit at age 62 which is prior to Mr. Burns' SSRA, using the previously discussed reduction factors specified in Q&A-5 of Notice 87-21. Because Mr. Burns' high-3 average compensation exceeds the 1994 dollar limitation (and, thus, will exceed the dollar limitation reduced for early commencement), the dollar limitation will be the limitation applicable to Mr. Burns' benefit.

(i) To adjust Mr. Burns' benefit to a single life annuity commencing at age 62, the single sum (\$650,000) is divided by an age 62 annuity factor of 10.918 (derived using UP-1984 and 5%, the mortality table used under the Plan for determining single sums and the greater of the plan rate for determining single sums and 5%), which equals \$59,534.71.

(ii) To adjust the dollar limitation for commencement of benefits 36 months before SSRA,

$$\begin{aligned} &118,800 [1 - (5/9)(.01)(36)] \\ &= 118,800 [.80] \\ &= 95,040 \end{aligned}$$

Therefore, Mr. Burns' benefit, expressed as a single life annuity (\$59,534.71), does not exceed the dollar limitation applicable to him at age 62 (\$95,040).

- (4) **If a participant's benefit commences before the participant attains age 62**, the DB dollar limitation applicable to the participant at age 62 (as reduced above) is further reduced for each month by which benefits commence before the month in which the participant attains age 62. That is, the DB dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity that is the actuarial equivalent of the DB dollar limitation applicable to the participant at age 62.

The interest and mortality assumptions used for purposes of adjusting the dollar limitation where benefits commence before the participant attains age 62 must satisfy the requirements of IRC 415(b)(2)(E).

Prior to GATT, this section required that where benefits commence prior to age 62, the dollar limitation is adjusted to an amount payable at the earlier age which is equivalent to the age 62 limitation, using the greater of the plan rate (used for early retirement) and 5 percent. (The use of a lesser interest rate could result in a greater limitation.) The plan mortality table (used for early retirement) is generally used to take mortality into account for this purpose, but another reasonable mortality table as specified under the plan could be used.

After GATT and prior to enactment of SBJPA, the actuarial assumptions which must be taken into account for purposes of adjusting the dollar limitation for early commencement of benefits were dependent on whether the form of benefit being tested was a form subject to section 417(e)(3). **(Note that since SBJPA amended GATT retroactively, plans**

ordinarily would not follow the rules in this subsection for distributions made after the enactment of GATT and prior to August 20, 1996. However, in accordance with Q&A-11 of Rev. Rul. 98-1, distributions during that period need not be redetermined to follow the SBJPA modifications.)

Under Rev. Rul. 95-29, where a benefit is not in a form subject to section 417(e)(3) and commences prior to age 62, sections 415(b)(2)(E)(i) and (v) provide that the dollar limitation at the earlier age is the **lesser** of: (1) the amount equivalent to the age 62 limitation, computed using the interest rate and mortality table (or other tabular factor) used for actuarial equivalence for early retirement benefits under the plan; and (2) the amount equivalent to the age 62 limitation, computed using **5 percent interest** and the applicable mortality table.

Where the benefit is in a form subject to section 417(e)(3) and commences prior to age 62, sections 415(b)(2)(E)(ii) and (v) provide that the dollar limitation at the earlier age is the **lesser** of: (1) the amount equivalent to the age 62 limitation, computed using the interest rate and mortality table (or other tabular factor) used for actuarial equivalence for early retirement benefits under the plan; and (2) the amount equivalent to the age 62 limitation, computed using the **applicable interest rate** and the applicable mortality table.

After GATT as amended by SBJPA, Rev. Rul. 98-1 provided that where the age at which the benefit is payable is less than 62, the dollar limit at the earlier age is equal to the **lesser** of: (1) the equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan; and (2) the amount computed using 5 percent interest and the applicable mortality table. **This is the case whether or not the benefit is in a form subject to section 417(e)(3).**

Note: In determining actuarial equivalence for this purpose, it is generally necessary to take mortality into account. However, the mortality decrement may be ignored to the extent that a forfeiture does not occur at death. In other words, the limitation may be reduced using interest only (i.e., without taking mortality into account) solely in the case where there is no forfeiture at death. This would be true where the death benefit is the present value of accrued benefits (PVAB), but not necessarily where the only pre-retirement death benefit is a qualified pre-retirement survivor annuity (QPSA). (See IRC section 415(b)(2)(E), Q&A-5 of Notice 87-21, and Q&A G-3 of Notice 83-10.)

Note that because an agent could be examining a plan year where the employer has not yet amended the plan to apply the IRC 415(b)(2)(E) changes under GATT as amended by SBJPA, examples are provided that demonstrate methodology used before and after such amendment.

Example 15

Plan X, a DB plan, provides that early retirement annuity benefits are the actuarial equivalent of the normal form of annuity payable at age 65. Actuarial equivalence is determined for all purposes under the Plan using the 83 IAM (Male) Table and 6% interest. The Plan provides that there is no forfeiture of retirement benefits on death. M, a participant of Plan X, retires in 1998 at age 60 with a benefit (prior to application of section 415) of \$95,000 payable at age 60 as a straight life annuity. M has more than 10 years of participation service. The dollar limit at SSRA is \$130,000, and M's SSRA is 66. What is the dollar limitation that is applicable to M's benefit?

a. If the plan has been amended to not apply the section 415(b)(2)(E) changes under GATT and SBJPA to M's benefit and the amendment is permitted under the rules of Rev. Rul. 98-1:

(i) the dollar limit is adjusted from age 66 (SSRA) to age 62 as follows.

$$130,000 \times [1 - (5/9)(.01)(36) - (5/12)(.01)(12)] \\ = 130,000 \times [.75] = 97,500$$

(ii) the dollar limit at age 60 is calculated using the 1983 IAM (Male) Mortality Table and 6% (the greater of the plan rate and 5%). (Because there is no forfeiture of benefits on death, the age 62 dollar limit is adjusted to age 60 using interest only.)

$$\begin{array}{r} \$97,500 \quad \times \quad \frac{N_{62}^{(12)}}{D_{62}} \quad \times \quad \frac{1}{(1.06)^2} \\ \hline \frac{N_{60}^{(12)}}{D_{60}} \\ = \quad \$97,500 \quad \times \quad 11.319 \quad \times \quad .8900 \\ \hline 11.778 \\ = \quad 83,393 \end{array}$$

The dollar limit at age 60 is \$83,393. (M's benefit exceeds this limitation and must be limited to \$83,393.)

b. If the plan has been amended to apply the section 415(b)(2)(E) changes under GATT and SBJPA to all accrued benefits for all participants under the plan:

(i) the dollar limit is adjusted from age 66 to age 62 in the same manner as above, yielding an age 62 limit of \$97,500.

(ii) the age 62 dollar limit is adjusted to age 60 applying the same methodology/formula as shown in (a) above, but using the plan's basis for actuarial equivalence (6% and 83 IAM).

$$[97,500 \times 11.319 \times .8900] / 11.778 = 83,393$$

(iii) the age 62 dollar limit is adjusted to age 60 applying the same formula as shown in (a) above, using 5% interest and the applicable mortality table.

Example 15

$$\begin{aligned}
 & [97,500 \times 12.456 \times \{1 / (1.05)^2\}] / 13.037 \\
 & = [97,500 \times 12.456 \times .90703] / 13.037 \\
 & = 84,494
 \end{aligned}$$

The dollar limit at age 60 is the lesser of the amounts in (ii) and (iii), or \$83,393. (M's benefit at age 60 (\$95,000) exceeds this limitation and must be limited to \$83,393.)

EXAMPLE 16

Plan S, a defined benefit plan, provides for single-sum distributions of a participant's benefit as the normal form of benefit and specifies that an 8% interest rate and the UP-1984 Mortality Table are to be used for determining actuarial equivalence for forms of benefit other than the normal form of benefit. Under Plan S, the interest assumption of 6% is used with the UP-1984 Mortality Table for purposes of calculating early retirement benefits. Normal retirement age under Plan S is age 63.

There is some forfeiture on death under Plan S. The plan provides that actuarial equivalence is calculated using the full mortality adjustment (rather than calculating actuarial equivalence using a mortality adjustment to the extent that a forfeiture occurs on death).

Part 1

Mr. North, a participant in Plan S for 15 years, will retire in 1994, at age 60 with a single-sum benefit under the plan at age 60 of \$550,000. Mr. North's SSRA is 65. Mr. North's high-three year average compensation is \$200,000. How is the section 415(b) dollar limitation applied to Mr. North's benefit?

Solution. Step 1: the \$550,000 is converted to an actuarially equivalent straight life annuity commencing at age 60. The UP-1984 table and 8% (the greater of the plan rate used for other forms of benefit and 5%) are used to generate a \$1 per year age 60 annuity factor of 9.133 ($N_{60}^{(12)}/D_{60}$). The single sum, divided by 9.133, converts to a straight life annuity commencing at age 60 of \$60,221 (\$550,000/9.133).

Step 2: Mr. North's high three-year average compensation exceeds the dollar limitation, so the dollar limitation applies. The IRC 415(b) dollar limitation, adjusted for early commencement at age 60, must be determined. The limitation is first reduced to the limitation for a benefit commencing at age 62, using the reduction factors of Q&A-5 of Notice 87-21. Using these factors, the 1994 limitation is reduced for commencement at age 62, 36 months earlier than the participant's social security retirement age of 65.

$$\begin{aligned}
 & \$118,800 \times [1 - (5/9)(.01)(36)] \\
 & = \$118,800 \times .80 \\
 & = \$95,040
 \end{aligned}$$

The limitation for age 62 (for a participant with a SSRA of 65) is further reduced for commencement of benefits at age 60, using the UP-1984 table and an interest assumption of 6% (the greater of the plan rate used for early retirement and 5%).

EXAMPLE 16

$$\$95,040 \quad \times \quad \frac{N_{62}^{(12)}}{D_{62}} \quad \times \quad \frac{N_{60}^{(12)}}{D_{60}}$$

$$\frac{N_{60}^{(12)}}{D_{60}}$$

$$= [\$95,040 \times 10.105 \times 0.86379] / 10.596$$

$$= \$78,290$$

Step 3: The benefit to be distributed to Mr. North in 1994 (when expressed as a straight life annuity of \$60,221 commencing at the same age) does not exceed the section 415(b) dollar limitation applicable to Mr. North at that age (\$78,290).

Part 2

Assume in the example above that, rather than retiring at age 60, Mr. North retires in 1997 at age 63 with a single-sum benefit of \$850,000. The plan has been amended to apply the section 415(b)(2)(E) changes under GATT (as amended by SBJPA) to all accrued benefits under the Plan. The applicable rate is 7 percent. How is the section 415(b) dollar limitation applied to Mr. North's benefit?

Step 1: The annual benefit equivalent to the single-sum benefit must be determined.

(i) The equivalent annual benefit is determined using the plan factors of 8% (the greater of the plan rate used for other forms of benefit and 5%) and UP-1984 to determine an age 63 annuity factor of 8.582.

$$850,000 / 8.582 = 99,045$$

(ii) The equivalent annual benefit is determined using the applicable interest rate (7%) and the applicable mortality table to determine an age 63 annuity factor of 10.319.

$$850,000 / 10.319 = 82,372$$

The equivalent annual benefit used for section 415(b) testing is the greater of these two benefits, \$99,045.

Step 2: The section 415(b) limitation applicable at age 63 must be determined. Mr. North's high three average compensation still exceeds the dollar limitation, so the dollar limitation applies. The 1997 dollar limit applicable at Mr. North's SSRA (65) must be adjusted to age 63 using the factors from Notice 87-21.

$$125,000 \times \{1 - [(5/9)(.01)(24)]\}$$

$$= 125,000 \times \{13/15\}$$

$$= 108,333$$

Step 3: The annual benefit at age 63 equivalent to Mr. North's single-sum benefit at age 63 (99,045) does not exceed the dollar limitation applicable to Mr. North at age 63 (108,333).

4.72.6.3.4.3.2 (12-01-2002)

**Benefits
Commence
After SSRA**

- (1) If the retirement income benefit under the plan commences after a participant's SSRA, the determination as to whether the dollar limitation has been satisfied is made by increasing the limitation so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to the dollar limitation expressed as an annual benefit beginning at the participant's SSRA. However, the benefit must not exceed the compensation limitation applicable to the participant, which is not adjusted for late retirement. In determining actuarial equivalence for these purposes, a reasonable mortality table must be used to the extent that a forfeiture would have occurred on death between normal retirement age and the commencement of benefits. However, the accumulation of value after SSRA but prior to the actual commencement of benefits must not reflect the mortality decrement to the extent that benefits will not be forfeited if the participant dies between the SSRA and the date benefits actually commence. See IRC 415(b)(2) and Q&A G-4 of Notice 83-10.

- (2) **The interest and mortality assumptions used for purposes of adjusting the dollar limitation where benefits commence after a participant's SSRA must satisfy the requirements of section 415(b)(2)(E).**

Prior to GATT, this section provided that for purposes of adjusting the dollar limitation for benefits commencing after the social security retirement age, the interest rate assumption shall not be greater than the lesser of 5% or the rate specified in the plan. (The use of a greater rate could result in a greater limitation.)

Under GATT, as amended by SBJPA, the increased age-adjusted dollar limit is the lesser of the equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for late retirement benefits under the plan and the equivalent amount computed using 5 percent interest and the applicable mortality table, to the extent mortality is taken into account as described in the prior paragraph.

[Note that the interest rate changes to IRC 415(b)(2)(E) under section 767(b) of GATT did not reference IRC 415(b)(2)(D). The added requirement that the applicable mortality table be used did reference IRC 415(b)(2)(D).]

Example 17

Mr. Ellis was eligible to retire under Plan P at his SSRA and NRA of 65 in 1996, but chose to continue working. He retired in 1998 at age 67, with a high three-year average compensation of \$175,000 and an accrued benefit before application of section 415(b) of \$152,000 per year. The terms of the defined benefit plan provide that the UP-1984 Mortality Table and 6% are used for determining actuarial equivalence for retirement after age 65. Under Plan P, there is no forfeiture of Mr. Ellis' accrued benefit should he die after age 65, but before actual retirement. What is the section 415(b) limitation applicable to Mr. Ellis?

Example 17Solution.

a. If the Plan has been amended to not apply the section 415(b)(2)(E) changes under GATT (as amended by SBJPA) to Mr. Ellis' benefit, and the amendment is permitted under the rules of Rev. Rul. 98-1:

Here, there is no forfeiture on death. Therefore, the dollar limitation applicable to Mr. Ellis in 1998 must be calculated without taking mortality into account for the two years. The following calculations determine the DB dollar limitation for retirement 2 years after Mr. Ellis' SSRA, at age 67, using UP-1984 and 5 percent (the lesser of the plan rate and 5 percent).

$$\begin{aligned}
 & \$130,000 \quad \times \quad \frac{N_{65}^{(12)}}{D_{65}} \quad \times \quad (1.05)^2 \\
 & \hline
 & \qquad \qquad \frac{N_{67}^{(12)}}{D_{67}} \\
 & = \quad \frac{\$130,000 \quad \times \quad 10.036 \quad \times \quad 1.1025}{9.447} \\
 & = \quad \frac{\$1,438,410}{9.447} \\
 & = \quad \$152,261
 \end{aligned}$$

As shown above: the 1998 DB dollar limitation (expressed as an annual benefit) is converted into a single sum at age 65 by multiplying it by an age 65 annuity factor (determined using the UP-1984 Mortality Table and 5% (the lesser of the plan rate or 5%)); the age 65 single sum is then advanced to age 67 using interest only; and the resulting single sum is converted back into an annual benefit at age 67 when divided by an age 67 annuity factor (again determined using the UP-1984 Mortality Table and 5%).

The dollar limitation (152,261) is less than Mr. Ellis' high-three average compensation (175,000). Therefore, the section 415(b) limitation applicable to Mr. Ellis's benefit at age 67 is \$152,261. Mr. Ellis' age 67 benefit (\$152,000) does not exceed the section 415(b) limitation applicable to him.

b. If the Plan has been amended to apply the section 415(b)(2)(E) changes under GATT (as amended by SBJPA) to all accrued benefits for all participants under the Plan:

The applicable dollar limit at age 67 is the lesser of the limit calculated using the plan rate and mortality, and the limit calculated using 5% and the applicable mortality table.

(i) The age 67 dollar limit is calculated using the same methodology as shown in part (a) above, but using the plan factors of 6% and UP-1984.

Example 17

$$\frac{130,000 \times 9.345 \times (1.06)^2}{8.833}$$

= 154,535

(ii) The age 67 dollar limit is calculated using the same methodology as shown in part (a) above, but using 5% interest and the applicable mortality table.

$$\frac{130,000 \times 11.534 \times (1.05)^2}{10.894}$$

= 151,745

The dollar limitation applicable to Mr. Ellis is the lesser of the amounts in (i) and (ii), or \$151,745. Because this amount is less than the compensation limit applicable to Mr. Ellis, this limit is the applicable section 415(b) limit.

Mr. Ellis' plan benefit of \$152,000 exceeds the section 415(b) limit applicable to his benefit. His benefit is limited to \$151,745.

4.72.6.3.4.3.3 (12-01-2002)
Exceptions

- (1) Exceptions to some of these adjustments are provided for plans maintained by governments and tax-exempt organizations. See IRC 415(b)(2)(F), IRC 415(b)(2)(G), IRC 415(b)(10), and IRC 415(b)(11).

4.72.6.3.4.3.4 (12-01-2002)
**Transition Rules
After
SBJPA/Rev. Rul.
98-1**

- (1) GATT, as amended by SBJPA, permits some grandfathering of benefits accrued prior to the date the IRC 415(b)(2)(E) changes are made effective for certain plans. Rev. Rul. 98-1 provides guidance.
- (2) Rev. Rul. 98-1 reexamines many of the questions addressed in Rev. Rul. 95-29 to incorporate the changes made by SPJPA to the Retirement Protection Act (RPA '94) portion of GATT, and provides general rules and effective dates applicable to the changes. Both Rev. Rul. 95-29 and Rev. Rul. 98-1 provide that plans that are not subject to IRC 417(e)(3) (such as governmental plans and certain church plans), while not subject to the interest rate requirement under IRC 415(b)(2)(E)(ii), are subject to the mortality table requirement under IRC 415(b)(2)(E)(v).
- (3) Optional transition rules regarding the application of the IRC 415(b)(2)(E) changes are provided in section 2 of Rev. Rul. 98-1. The IRC 415(b)(2)(E) changes generally must be applied to all benefits under a plan on and after the RPA '94 (GATT) IRC 415 effective date (generally the first day of the first limitation year beginning in 1995). However, under section 767(d)(3)(A) of RPA '94 (GATT), as amended by section 1449(a) of SBJPA, a plan adopted and in effect before December 8, 1994, may provide that the IRC 415(b)(2)(E) changes do not apply with respect to benefits accrued before the **earlier** of (i) the date a plan amendment applying the IRC 415(b)(2)(E) changes is adopted or made effective (whichever is later), or (ii) the first day of the first limitation year beginning after December 31, 1999. Rev. Rul. 98-1 refers to the earlier of the dates

in (i) and (ii) above as the “final implementation date”, and refers to the benefits to which the IRC 415(b)(2)(E) changes are not applied as “old-law benefits”. A participant’s old-law benefit is determined as of a date specified in the plan for the participant (called the participant’s “freeze date”) that is before the final implementation date. The plan may specify a freeze date for some or all participants.

- (4) A participant’s old-law benefit is the participant’s accrued benefit under the terms of the plan as of the RPA ’94 (GATT) freeze date, for the annuity starting date and optional form and taking into account the limitations of IRC 415, as in effect on December 7, 1994, including the participation requirements under IRC 415(b)(5). In determining the amount of a participant’s RPA ’94 (GATT) old-law benefit, the following shall be disregarded:
 - a. any plan amendment increasing benefits adopted after the RPA ’94 (GATT) freeze date; and
 - b. any cost-of-living adjustments that become effective under IRC 415(d) after the RPA ’94 (GATT) freeze date.
- (5) The old-law limitations are applied using the interest rate and mortality table for the optional form or commencement date under the plan as in effect on December 7, 1994, (that is, without regard to amendments affecting such actuarial equivalence factors made after December 7, 1994). (Note, however, that for purposes of determining the old-law benefit, an amendment after that date but before the freeze date to change benefits, for example from 1 percent of pay to 2 percent of pay, would not be ignored.) Therefore, except as provided in Q&A-15 of Rev. Rul. 98-1, in determining the old-law benefit, the IRC 415(b) limitations are applied using the plan’s mortality table (as in effect on December 7, 1994) and, except as provided in IRC 415(b)(2)(D), an interest rate no less than the greater of 5 percent or the plan rate (as in effect on December 7, 1994), to determine actuarial equivalence.
 - If the plan is amended for the RPA ’94 (GATT) 417(e)(3) changes on or before the RPA ’94 freeze date, such changes must be taken into account in determining the plan benefit used in the calculation of a participant’s RPA ’94 old-law benefit, and where a variable rate (e.g., PBGC rates, applicable rate) is used under the plan, the rate in effect on the RPA ’94 freeze date is used to determine the RPA ’94 old-law benefit on the RPA ’94 freeze date.
 - If, at any date after the RPA ’94 (GATT) Freeze Date, the participant’s total plan benefit, before the application of IRC 415, is less than the participant’s RPA ’94 (GATT) old-law benefit, the RPA ’94 old-law benefit will be reduced to a benefit equal to the participant’s total plan benefit.
 - If the RPA ’94 (GATT) old-law benefit was reduced during the period between the RPA ’94 freeze date and the first day of the first limitation year beginning on or after January 1, 2000, because of annual additions credited to a participant’s account in a defined contribution plan, the RPA ’94 old-law benefit will increase to the RPA ’94 freeze

date level as of the first day of the first limitation year beginning on or after January 1, 2000. (This is a result of the repeal of IRC 415(e).)

- The use of a different interest rate and mortality table may not increase a participant's RPA '94 old-law benefit to an amount greater than such benefit as of the RPA '94 freeze date.

Example 18

Plan X, with a calendar year plan year and limitation year, is amended July 1, 1999, to apply the IRC 415(b)(2)(E) changes, effective January 1, 2000. As amended, Plan X provides that the IRC 415(b)(2)(E) changes will not apply to any benefits accrued under the plan as of December 31, 1999. What are the freeze date and the final implementation date for Plan X?

Solution. The freeze date for all participants is December 31, 1999. The final implementation date is the earlier of (i) and (ii), where (i) is the amendment's adoption date (July 1, 1999) or the date the amendment is made effective (January 1, 2000), whichever is later, or (ii) the first day of the first limitation year beginning after December 31, 1999 (January 1, 2000). Because (i) and (ii) are both equal to January 1, 2000, the final implementation date is January 1, 2000.

Example 19

Plan B has a calendar year plan year and limitation year. Plan B is amended on December 1, 1998, to apply the IRC 415(b)(2)(E) changes effective January 1, 1998, and to provide that the changes will not apply to benefits accrued through December 31, 1997. What are the freeze date and the final implementation date for Plan B?

Solution. The freeze date for all participants is December 31, 1997. The final implementation date is the earlier of (i) and (ii), where (i) is the amendment adoption date (December 1, 1998) or effective date (January 1, 1998), whichever is later, or (ii) the first day of the first limitation year beginning after 1999 (January 1, 2000). The final implementation date is December 1, 1998.

Example 20

The following example is similar to an example used in Rev. Rul. 98-1, but uses a different SSRA.

Plan B has a calendar year plan year and limitation year. As of December 7, 1994, the plan provides the normal retirement benefit in the form of a straight life annuity beginning at age 65 (NRA). Early retirement benefits are available at any age on or after age 60 with an actuarial reduction. The plan rate and the plan mortality table used for the early retirement reduction are 5 percent and the UP-1984 Mortality Table. Under the plan, single-sum distributions are available at any permitted retirement age.

Example 20

Under Plan B, single-sum distributions are calculated as the actuarial present value of the straight life annuity benefit payable at the actual retirement age using the PBGC immediate interest rate and the UP-1984 Mortality Table. In accordance with IRC 417(e) and the regulations thereunder, the plan further provides that any single-sum distribution must be at least as great as the actuarial present value of the participant's accrued normal retirement benefit computed using the PBGC interest rates for deferred annuities and the UP-1984 Mortality Table. The plan has not been amended to change the interest rate or mortality table used for determining single-sum benefits or early retirement reductions at any time after December 7, 1994.

Under Plan B, there is no forfeiture of accrued benefits on account of death prior to the annuity starting date, the IRC 415(b) limitations are applied only after the otherwise determined benefit has been adjusted for early retirement and for any optional form of benefit and, for purposes of adjusting the dollar limitation, the mortality decrement is ignored prior to age 62.

Plan B is amended on December 1, 1998, to apply the IRC 415(b)(2)(E) changes and provides that the changes will not apply to benefits accrued through December 31, 1997. (Thus, the freeze date is December 31, 1997, and the final implementation date is December 1, 1998.)

N, a participant of Plan B, has a SSRA of 66. As of the freeze date, N has 10 years of participation and has an accrued benefit payable at NRA (before application of IRC 415) of \$110,000 per year, paid monthly. N would like to retire in 1999 at age 60 and receive the retirement benefit (with proper spousal consent) in the form of a single sum. Assume that N's high-three year compensation exceeds the dollar limitation for all years.

Question. How is N's old-law age 60 single-sum benefit determined?

Solution. First (step 1), N's accrued benefit as of the freeze date, payable at age 60 in the form of a single sum, must be determined and converted to an equivalent annual benefit payable at age 60. Secondly (step 2), the lesser of the old-law dollar limitation applicable to an annual benefit at age 60 and the compensation limitation applicable to N must be determined. Thirdly, (step 3) the equivalent annual benefit payable at age 60 must not exceed the limitation applicable to N at age 60. N's old-law benefit is the benefit accrued as of the freeze date, limited pursuant to plan terms as necessary to satisfy IRC 415 where an old-law dollar limitation is used.

Step 1: Determine the equivalent annual benefit payable at age 60.

(i) N's age 60 early retirement **annuity** benefit under the Plan (prior to limitation for IRC 415) as of the freeze date must be determined.

N's annuity benefit under the Plan as of the freeze date and payable at NRA (\$110,000), is reduced to an annuity benefit payable at age 60 (\$75,242) using the plan early retirement factors (5 percent and the UP-1984 Mortality Table), as shown below.

Example 20

Note: the symbol $\ddot{a}_x^{(12)}$ represents the cost at age "x" of an annuity, paid monthly, commencing at age "x", and has the same value as the symbol

$$\frac{N_x^{(12)}}{D_x}$$

$$\frac{110,000 \times \ddot{a}_{65}^{(12)} \times 1/[(1.05)^5]}{\ddot{a}_{60}^{(12)}}$$

$$= \frac{110,000 \times 10.036 \times 1/[(1.05)^5]}{11.496}$$

$$= 75,242$$

(ii) The **single-sum** equivalent of N's age 60 annuity benefit as of the freeze date must be determined.

The single-sum benefit accrued as of N's freeze date and payable at age 60 is \$797,264, calculated as shown below using the PBGC immediate rate of 6 percent and the UP-1984 Mortality Table. (For purposes of this example, assume that the single-sum benefit calculated using the PBGC interest rates for deferred annuities and the UP-1984 Mortality Table is less than the single-sum benefit (\$797,264) calculated using the PBGC immediate rate.)

$$75,242 \times \ddot{a}_{60}^{(12)}$$

$$= 75,242 \times 10.596 = 797,264$$

(iii) For purposes of IRC 415 testing, the **annual benefit** equivalent to N's age 60 single-sum benefit under the Plan as of the freeze date must be determined.

N's age 60 single-sum benefit (\$797,264) is converted to an annual benefit of \$75,242, using the greater of the plan rate of 6% or 5%, (6%), and the plan mortality table (UP-1984 Mortality Table), as shown below.

$$(797,264) / (10.596) = 75,242$$

Step 2: Determine the old-law limitation applicable to this optional form.

The age-adjusted dollar limit at age 60 must be determined on the basis of IRC 415(b)(2)(E) as in effect on December 7, 1994 [using the greater of 5 percent or the plan early retirement rate (also 5 percent) and the plan mortality (UP-1984 Mortality Table)], without taking into account COLA increases under IRC 415(d) after the freeze date (December 31, 1997).

Example 20

The 1997 dollar limitation (\$125,000) is adjusted to \$80,759, as shown below.

- (i) \$125,000 is adjusted from age 66 (N's SSRA) to age 62, using Notice 87-21 factors:

$$125,000 \times [1 - (5/9)(.01)(36) - (5/12)(.01)(12)] \\ = 125,000 \times 75 \% = 93,750$$

- (ii) \$93,750 is adjusted from age 62 to age 60, using 5% and UP-1984:

$$= \frac{93,750 \times \ddot{a}_{62}^{(12)} \times 1/[(1.05)^2]}{\ddot{a}_{60}^{(12)}} \\ = \frac{93,750 \times 10.918 \times 1/[(1.05)^2]}{11.496} \\ = 80,759$$

Conclusion. Because the old-law dollar limitation (\$80,759) applies (the compensation limitation applicable to N is greater), and the age 60 annual benefit (\$75,242) equivalent to the age 60 single-sum benefit (\$797,264) does not exceed this old-law limitation, the single-sum old-law benefit at age 60 is \$797,264.

- (6) **Applying the IRC 415(b) limitations when a participant has an RPA '94 (GATT) old-law benefit.** For participants with RPA '94 old-law benefits, for purposes of determining whether a participant's benefit exceeds the IRC 415(b) limitations after the RPA '94 (GATT) freeze date, an employer must elect one of three methods described in Q&A-14 of Rev. Rul. 98-1.
- a. Method one: Equivalent annual benefits are determined separately with respect to the participant's RPA '94 (GATT) old-law benefit, and the portion of the participant's total plan benefit that exceeds the RPA '94 old-law benefit. A participant's total annual benefit is the sum of these two annual benefits, and cannot exceed the IRC 415(b) limitation applicable to the participant. A plan using method one may provide that in any event the participant will receive no less than the old-law benefit, limited to the extent required under Q&A-15 of Rev. Rul. 98-1.
- If the determination is being made before the final implementation date, where a participant's benefit must be adjusted to an actuarially equivalent annual benefit, the annual benefit equivalent to the RPA '94 old-law benefit is calculated using an interest rate equal to the greater of the plan interest rate or 5 percent and the plan mortality table, as provided under IRC 415(b)(2)(E) as in effect on December 7, 1994, and under the plan terms as of December 7, 1994. The annual benefit equivalent to the portion of the participant's total plan benefit that exceeds the RPA '94 old-law benefit is calculated using currently effective rules under IRC 415(b). For a determination made after the freeze date and before the final implementation date, where

the defined benefit dollar limitation is adjusted for commencement of benefits prior to age 62, such adjustments are made in accordance with 4.72.6.3.4.3.1; adjustments for commencement of benefits after Social Security Retirement Age are made in accordance with 4.72.6.3.4.3.2.

If the determination is being made on or after the final implementation date, where a participant's benefit must be adjusted to an actuarially equivalent annual benefit, the annual benefit equivalent to the participant's RPA '94 old-law benefit is calculated using an interest rate equal to the greater of the interest rate specified in the plan or 5 percent, and the mortality table specified in the plan. The annual benefit equivalent to the portion of the participant's total plan benefit that exceeds the RPA '94 old-law benefit is calculated using currently effective rules under IRC 415(b)(2)(E) (as described in 4.72.6.3.4.2.1). For a determination on or after the final implementation date, where the defined benefit dollar limitation is adjusted for commencement of benefits prior to age 62, such adjustments are made as described in 4.72.6.3.4.3.1; adjustments for commencement of benefits after SSRA are made as described in 4.72.6.3.4.3.2.

- b. Method two: A participant's total annual benefit under the plan is determined, and this benefit must not exceed the IRC 415(b) limitation applicable to the participant. Where a participant's benefit must be adjusted to an actuarially equivalent annual benefit, an annual benefit equivalent to the participant's total benefit is calculated as described in 4.72.6.3.4.2.1. In any event, the participant will receive no less than the participant's RPA '94 old-law benefit, limited to the extent required under Q&A-15 (and other Q&As that come into play) of Rev. Rul. 98-1.
- c. Method three: A participant's benefit is limited only to the extent needed to satisfy either the first or second method described above.

For purposes of determining that a participant receives no less than the participant's RPA '94 old-law benefit, the limitation applicable to the participant's RPA '94 old-law benefit (old-law limitation) is determined, and the participant may receive the RPA '94 old-law benefit to the extent it does not exceed such old-law limitation.

- Before the final implementation date, adjustments to the old-law limitation for commencement of benefits prior to age 62 are calculated using an interest rate equal to the greater of the plan interest rate or 5 percent and the plan mortality table, as provided under IRC 415(b)(2)(E) as in effect on December 7, 1994, and under the plan terms as of December 7, 1994; adjustments to the old-law limitation for commencement of benefits after Social Security Retirement Age are calculated using an interest rate equal to the lesser of the plan interest rate or 5 percent and the plan mortality table, as provided under IRC 415(b)(2)(E) as in effect on December 7, 1994, and under the plan terms as of December 7, 1994.
- On or after the final implementation date, adjustments to the old-law limitation for commencement of benefits prior to age 62 are calculated using an interest rate equal to the greater of the plan interest rate or

5 percent, and the plan mortality table, using the interest rate and mortality table included in the plan as of the date of determination; adjustments to the old-law limitation for commencement of benefits after Social Security Retirement Age are calculated using an interest rate equal to the lesser of the plan interest rate or 5 percent and the plan mortality table, using the interest rate and mortality table included in the plan as of the date of determination. **(However, in no event may a participant's old-law benefit exceed the participant's old-law benefit as of the RPA '94 freeze date.)**

4.72.6.3.4.3.5 (12-01-2002)

Examination Steps

- (1) What is the normal form of the retirement benefit under the plan?
 - a. Where a plan provides for optional forms of benefit, other than in the form of a single life annuity or a QJSA, do the plan terms provide the actuarial assumptions to be used for determining actuarial equivalence for other forms of benefit?
 - b. For purposes of IRC 415(b) testing, are those forms of benefit which require adjustments correctly converted to an actuarially equivalent single life annuity commencing at the same age? Do the actuarial assumptions used for the conversion satisfy IRC 415(b)(2)(E)?
- (2) What is the normal retirement age under each plan?
 - a. Where a participant's benefit commences before their SSRA, is the IRC 415(b) dollar limitation adjusted correctly? Do the actuarial assumptions used for the adjustment satisfy IRC 415(b)(2)(E)?
 - b. Where a participant's benefit commences after their SSRA, is the IRC 415(b) dollar limitation properly adjusted for such late commencement? Do the actuarial assumptions used for the adjustment satisfy IRC 415(b)(2)(E)?
 - c. Does the use of mortality in adjusting the dollar limitation for early or late commencement satisfy the rules found in Q&A G-4 of Notice 83-10 and Q&A-5 of Notice 87-21?
 - d. Where benefits commence prior to age 62, are close to the IRC 415(b) dollar limit, and the use of a mortality decrement is required, has the field actuary been consulted for assistance?

4.72.6.3.4.4 (12-01-2002)

QDROs and IRC 415

- (1) IRC 414(p) provides rules that a domestic relations order must satisfy to be treated as a qualified domestic relations order (QDRO). Q&A-20 of Notice 87-21 states that benefits provided to alternate payees of participants pursuant to QDROs must be aggregated with benefits provided to participants from all DB and DC plans in applying the limitations of IRC 415. Thus, the aggregated distributions are subject to the single limitation applicable to the participant under IRC 415(b) and 415(c) (and 415(e) for limitation years beginning before 2000).
- (2) Although the aggregate amounts distributed are subject to a single IRC 415 limitation, there is no requirement that this limitation be split between the payees in any particular manner. The general rule applied to the distributions is that the actuarial value of the amounts distributed may not

exceed the actuarial value of the annual benefit that could be paid to the participant at the age the participant's benefit commences under the plan.

Example 21

In 1996, Mr. Hill, age 59, and his wife, age 54, divorce. Under the terms of a QDRO, Mr. Hill's former spouse commences receiving a portion of Mr. Hill's retirement annuity benefit under a DB plan, Plan D, in 1997 at age 55. Mr. Hill will commence benefits at his normal retirement age of 65, also his SSRA. (When Mr. Hill is 65, his former spouse will be 60.) How would the IRC 415(b) limitation be applied in these circumstances?

Solution. For IRC 415 purposes, the plan could distribute an annual benefit of \$X for the life of the alternate payee, commencing at age 55, and \$Y for the life of the participant, commencing at age 65, for any combination of \$X and \$Y that satisfied the relation:

$$\begin{array}{rcl}
 (\$X) & \frac{N_{55}^{(12)}}{D_{60}} & + \quad (\$Y) \quad \frac{N_{65}^{(12)}}{D_{65}} \\
 \\
 = & (\$125,000) & \times \quad \frac{N_{65}^{(12)}}{D_{65}}
 \end{array}$$

NOTE: Of course, these calculations must be performed using assumptions that satisfy the IRC 415(b)(2)(E) requirements.

4.72.6.3.4.5 (12-01-2002)

Social Security Supplements and IRC 415

- (1) A social security supplement is generally a benefit that begins and terminates before the age when a participant is entitled to old-age insurance benefits, and does not exceed the old-age insurance benefit that the participant will receive at the applicable age. Social security supplements are benefits that are directly related to retirement benefits and, therefore, are taken into account for IRC 415 purposes (see 4.72.6.3.4.1, "Benefits for which no adjustments are required"), although they are not accrued benefits for IRC 411 purposes. See Reg. 1.411(a)-7(c)(4).

Example 22

Under Plan R, when participant West retires at age 60 he will receive his age 60 retirement benefit plus an employer subsidized social security supplement. Mr. West will receive the social security supplement from age 60 to age 65, his SSRA. How is the IRC 415(b) limitation applied to Mr. West's benefit?

Solution. The social security supplement plus the retirement benefit to be paid to Mr. West, when converted to an actuarially equivalent straight life annuity commencing at age 60 using the IRC 415 assumptions, must not exceed (i.e., must be less than or equal to) the IRC 415(b) dollar limitation, adjusted for commencement at age 60. That is, the following relation must be satisfied at age 60.

Example 22

$$\frac{(\text{Pres. Value Soc. Sec. Supp.}) + (\text{Pres. Value Age 60 Ret. Ben.})}{\ddot{a}_{60}} \leq \text{IRC 415(b) limitation reduced for age 60 commencement}$$

4.72.6.3.4.6 (12-01-2002)

Participation or Service of Less Than 10 Years

- (1) Where a participant has less than 10 years of service or participation, IRC 415(b)(5) provides for a reduction in the limitations applicable to that participant. If an employee has less than 10 years of participation in a DB plan, the IRC 415(b)(1)(A) dollar limitation is multiplied by a fraction--
 - a. The numerator of which is the number of years (or part thereof) of participation in the DB plan of the employer, and
 - b. The denominator of which is 10.
- (2) In determining a participant's years of participation for these purposes, Q&A-7 of Notice 87-21 provides that a participant is credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met:
 - a. The participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used for benefit accrual purposes) required under the terms of the plan in order to accrue a benefit for the accrual computation period, and
 - b. The participant is included as a plan participant under the eligibility provisions of the plan for at least one day of the accrual computation period.
 - c. If these two conditions are met, the portion of a year of participation credited to the participant is equal to the amount of benefit accrual service credited to the participant for such accrual computation period. Thus, where the terms of a plan provide that a participant with 50 hours of service earns a year of service for benefit accrual purposes, a participant with 50 hours of service could be credited with a year of participation for purposes of IRC 415(b)(5).
 - d. Additionally, for a participant to receive a year (or part thereof) of participation for an accrual computation period, the plan must be established no later than the last day of such accrual computation period.
- (3) The compensation and benefits limitations of IRC 415(b)(1)(B), IRC 415(b)(4), and IRC 415(e) (for limitation years beginning before 2000) are reduced in a similar manner except that such reduction is applied with respect to years of service (less than 10) with an employer rather than years of participation in a plan.
- (4) In no event shall the reductions of IRC 415(b)(5)(A) or (B) reduce the limitations referred to in IRC 415(b)(1) and IRC 415(b)(4) to an amount less than 1/10 of such limitation determined without regard to IRC 415(b)(5).

- (5) Thus, under the rules of IRC 415(b)(5) the DB dollar limitation is reduced where a participant has less than 10 years of **participation**, following the rules of IRC 415(b)(5)(A), and the DB compensation limitation is reduced where a participant has less than 10 years of **service**, following the rules of IRC 415(b)(5)(B).

Example 23

"A", a participant in Corporation B's plan for six years, has seven years of service with the employer at the time of his retirement in 1999 at age 65 (A's SSRA). A's benefit on retirement is a straight life annuity based on average compensation for his high-3-years of \$20,000.

The IRC 415(b) limitation which will apply to A's benefit will be the lesser of 6/10 of the dollar limitation ($6/10 \times \$130,000 = \$78,000$) or 7/10 of the compensation limitation ($7/10 \times \$20,000 = \$14,000$). Therefore, A's benefit at age 65 may not exceed \$14,000.

Example 24

"B" participated in the corporation's DB plan for seven years before retiring in 1998 at age 65 (B's SSRA) with eight years of service, being then entitled to a straight life annuity benefit based on high-3 average compensation of \$70,000. B's benefit may not exceed the lesser of $\$70,000 \times 8/10 = \$56,000$ (the percentage of compensation limitation reduced for less than 10 years of **service**) or $\$130,000 \times 7/10 = \$91,000$ (the 1998 dollar limitation reduced for less than 10 years of **participation**). Therefore, B's benefit may not exceed \$56,000.

4.72.6.3.5 (12-01-2002)

**Special \$10,000
Minimum
Benefit**

- (1) IRC 415(b)(4) provides rules under which a minimum annual benefit may be provided. Notwithstanding the provisions of IRC 415(b)(1), (2), and (3), the benefits payable with respect to a participant under any DB plan shall be deemed not to exceed the limitation of this subsection if:
- The retirement benefits payable with respect to such participant under such plan and under all other DB plans of the employer do not exceed \$10,000 for the plan year, or for any prior plan year, and
 - The employer has not at any time maintained a DC plan in which the participant participated.
- (2) Therefore, DB plans may provide for a minimum \$10,000 annual benefit on behalf of any participant regardless of the limitation on benefits and regardless of the age at which benefits commence provided that--
- The participant's total employer-derived retirement benefit under all plans maintained by the same employer does not exceed \$10,000, and
 - The employer has never maintained a DC plan in which the participant participated.

Note: It is important to realize that (i) this \$10,000 annual benefit is subject to reduction for service of less than 10 years, according to the rules of IRC 415(b)(5)(B), and (ii) this exception provides only for a

minimum benefit paid in the form of an annuity (a \$10,000 annual benefit), and is not adjusted upward for early retirement provisions and benefits which are not in the form of a straight life annuity (e.g., a participant cannot under this exception receive the present value of a \$10,000 per year annuity as a single sum). See Reg. 1.415-3(f)(4).

Example 25

Mr. Levin participates in Plan X, a DB plan, and reaches the plan's normal retirement age (NRA) of 65 with nine years of service with the employer, and a high-3 average compensation at NRA of \$8,900. Under the terms of Plan X, Mr. Levin will receive the special \$10,000 annual benefit derived from employer contributions. For purposes of applying the special \$10,000 limitation to Mr. Levin's benefit, such limitation would be reduced to \$9,000 ($\$10,000 \times 9/10$) because Mr. Levin had less than 10 years of service. Thus, if the conditions under IRC 415(b)(4) are satisfied, the otherwise applicable limitation on Mr. Levin's benefit under IRC 415(b)(1) of \$8,010 ($\$8,010 = 100\%$ of A's high-3 average compensation $\times (9/10)$) would not reduce Mr. Levin's benefit below \$9,000.

NOTE: Employee contributions are not considered a separate DC plan for purposes of applying this special limitation, so the fact that a DB plan provides for employee contributions does not preclude a plan from taking advantage of this special exception. See Reg. 1.415-3(f)(3).

4.72.6.3.6 (12-01-2002) When to Apply IRC 415(b) Limitation

- (1) Once the IRC 415(b) limitation applicable to a participant is determined, the plan must specify the way in which the limitation is applied to the participant's benefit.
 - a. Determine the projected benefit under the plan formula, apply the applicable IRC 415 limitation to the projected benefit, and then calculate the accrued benefit based on this limited benefit, applying any additional limits as necessary. This method is sometimes described as the "project, limit, and prorate" method.
 - b. Determine the participant's projected benefit under the plan formula, calculate the participant's prorated benefit from the unlimited projected benefit, and then apply the applicable limitation to obtain the participant's accrued benefit. This second method is sometimes described as the "project, prorate, and limit" method.
- (2) Similarly, reductions or adjustments for optional forms of benefit, such as qualified joint and survivor benefits, may be applied before or after the IRC 415(b) limits are applied. The particular method to be used under a plan must be specified by the plan.

4.72.6.3.7 (12-01-2002) Combining Plans

- (1) For purposes of testing the limitation on benefits, all DB plans (whether or not terminated) are treated as one plan. To determine the plans to be

combined, all DB plans maintained by controlled corporations, commonly controlled trades or businesses, or affiliated service groups are taken into account.

- (2) When plans are combined, the annual benefit of a participant under each such plan must, when added together, not exceed the limitation on benefits. When applying the limitation on benefits, the participant's average compensation for high-3-years is applied in the same manner as when only one DB plan has ever been maintained by the same employer. However, each plan must also meet the limitation applicable to it. See IRC 415(f) and Regs. 1.415-8(a), (b), (c) and (f). (EGGTRA provides that, effective for limitation years beginning after December 31, 2001, a multiemployer plan is not combined or aggregated (1) with a non-multiemployer plan for purposes of applying the DB compensation limitation to the non-multiemployer plan, or (2) with any other multiemployer plan for purposes of the applying the IRC 415 limitations.)

4.72.6.3.7.1 (12-01-2002)

**Examination
Steps**

- (1) For participants with less than 10 years of participation, is the IRC 415(b)(1)(A) dollar limitation reduced appropriately?
- (2) For participants with less than 10 years of service, is the IRC 415(b)(1)(B) compensation limitation reduced appropriately? For participants with less than 10 years of service, are the limitations used in IRC 415(e) calculations for limitation years beginning before 2000 and, if applicable, the special \$10,000 limitation of IRC 415(b)(4) reduced appropriately?
- (3) Where a portion of a participant's benefit is paid to an alternate payee under a QDRO, does the sum of the actuarial values of the amounts distributed exceed the actuarial value of the maximum annual benefit that could be paid to the participant at the age the participant's benefit commences under the plan?
- (4) Are benefits under all DB plans of the employer aggregated for purposes of applying the IRC 415(b) limitations?

4.72.6.3.8 (12-01-2002)

**Non-Cash
Distributions**

- (1) Where a DB plan distributes anything other than cash, it is important to realize the plan may not distribute more than the limitations of IRC 415(b) allow, and, in valuing non-cash distributions, current values should reflect accurate fair market values.

4.72.6.3.8.1 (12-01-2002)

**Annuity
Contracts**

- (1) Annuity contracts may be purchased for participants in qualified plans who retire or leave employment with rights to a deferred or immediate retirement annuity or when the plan is about to terminate. In such a case, the benefits that may be distributed in later years under the annuity contract must conform to the benefits that could have been provided

under the terms of the plan. In particular, the contracts may not provide for distributions in excess of the IRC 415(b) limitations that are applicable under the plan.

4.72.6.3.8.1.1 (12-01-2002)

**Single-Sum
Distributions**

- (1) If a single-sum distribution is permitted under the annuity contract on or after the date the contract is distributed to the employee, such single sum is a distribution in a form other than a single life annuity and must satisfy the limitations on assumptions that may be used in converting the annuity benefit to an alternate form specified in IRC 415(b)(2)(E).

Note: Any cash surrender value or any other amount available to the employee is considered a distribution and in combination with other distributions under the contract must not exceed the maximum distribution limits under IRC 415(b). The contract should preclude such an excess by its terms.

4.72.6.3.8.1.2 (12-01-2002)

**Deferred
Annuity
Payments**

- (1) Where the contract provides for deferred annuity payments commencing after the date the contract is distributed, all payment options under the plan, which will also be available under the contract, must satisfy the IRC 415(b) limitations for each age and form of benefit provided, including the restrictions on assumptions that must be used to calculate optional benefit forms or benefits commencing at ages other than the participant's SSRA.

4.72.6.3.8.2 (12-01-2002)

**Springing Cash
Value Life
Insurance
Policies**

- (1) Certain qualified plans purchase a life insurance product known as a "springing cash value" policy.
- a. Premiums are paid by the Trust to purchase such a policy which will typically have a low cash surrender value in the first few years after purchase, but a much higher cash surrender value in subsequent years.
 - b. Where such a contract is distributed, the higher cash surrender value to which the participant is entitled in subsequent years may well exceed the maximum single-sum distribution that would be permitted under the terms of the plan and the applicable IRC 415 limits.
 - c. Any cash surrender values or other amounts available under the contract should be compared to the maximum single-sum value of the participant's otherwise applicable accrued benefit payable at that age, as limited to the appropriate annual amount under IRC 415(b). See Q&A-10 in Notice 89-25, 1989-1 C.B. 662, and the discussion of Springing Cash Value Policies in the Valuation of Assets Examination Guidelines.

4.72.6.3.8.3 (12-01-2002)

**Variable Annuity
Distributions**

- (1) Certain qualified plans purchase annuity contracts for participants who retire or otherwise become eligible for a benefit distribution, in the form of variable annuity contracts. Typically, benefits under such a plan will be specified as units in a fund maintained by an insurance company where

the benefit amount payable in succeeding years is adjusted by a specified procedure based on the actual investment return of the fund or some other external investment index. Actual payments are provided through an annuity contract distributed to the participant that specifies the adjustment procedures and benefit amounts payable.

- (2) In the case of such a contract, an adjustment must be made to the initial benefit amount payable under the contract to offset the expected increase in benefits payable in future years. This adjustment must be made in accordance with rules concerning adjustments that need to be made where the form of benefit is other than a straight life annuity. See IRC 415(b)(2)(E) and Reg. 1.415-3(c).
 - a. In general, an adjustment must be made to the initial annual benefit paid under the contract such that the present value of the varying benefit amounts does not exceed the present value of the otherwise applicable maximum level annual benefit that could be paid.
- (3) Rev. Rul. 80-253, 1980-2 C.B. 159, provides that, for purposes of IRC 415(b)(2), adjustments made in accordance with the rules provided in Rev. Rul. 76-47, 1976-1 C.B. 109, are deemed to be made on the basis of reasonable actuarial assumptions.
 - a. Section 3.04 of Rev. Rul. 76-47 provides actuarial adjustment factors appropriate in most cases for determining the maximum annual benefit payable under IRC 415(b)(1) when the form of benefit is a variable annuity.
 - b. Where the particular form of the variable annuity does not conform to the general pattern of adjustments in section 3.04 of Rev. Rul. 76-47, a determination of an appropriate adjustment factor must be made using the UP-1984 Mortality Table and an interest rate of 5%.
- (4) If the maximum benefit under IRC 415 (as adjusted) is greater than or equal to the initial benefit provided by the plan, the plan satisfies IRC 415(b).

4.72.6.3.9 (12-01-2002)

**Transitional
Rules and
Protected
Benefits**

- (1) IRC 415 was added to the Code by ERISA. The limitations under IRC 415(b) which were imposed under ERISA were significantly modified by TEFRA and TRA'86. Although both TEFRA and TRA'86 decreased the IRC 415 limits that were imposed by ERISA for the future, transition rules were provided and the current accrued benefit of participants prior to the effective dates of ERISA, TEFRA, and TRA'86 were protected.

4.72.6.3.9.1 (12-01-2002)

**ERISA Protected
Benefits**

- (1) Before ERISA, the limitation on benefits was, in general, 100% of the highest average compensation the participant earned covering any reasonable period of service with the employer establishing the plan. See Rev. Rul. 72-3, 1972-1 C.B. 105.
 - a. Under ERISA, the limitation on annual benefits from a DB plan was the lesser of \$75,000, adjusted annually for COLAs, and 100% of the

participant's high-3-year average compensation. The \$75,000 dollar limitation was reduced where benefits commenced before age 55, by adjusting the limitation to be actuarially equivalent to such a benefit beginning at age 55.

- (2) The IRC 415 limits were effective for years beginning after 12/31/75. A transitional rule for DB plans was provided in ERISA section 2004(d). This section provided that in the case of an individual who was an active participant in a DB plan before 10/3/73, the individual's annual benefit would be treated as not exceeding the IRC 415(b) limit if the following conditions were satisfied:
 - a. The participant's annual benefit payable on retirement did not exceed 100% of his/her annual rate of compensation on the earlier of: (i) 10/2/73, or (ii) the date on which he/she separated from the service of the employer;
 - b. The participant's annual benefit was no greater than the annual benefit which would have been payable to such participant on retirement if: (i) all the terms and conditions of the plan in existence on such date had remained in existence until such retirement, and (ii) the participant's compensation taken into account for any period after 10/2/73, did not exceed his/her annual rate of compensation on such date; and
 - c. In the case of a participant who separated from the service of the employer prior to 10/2/73, the annual benefit is no greater than his/her vested accrued benefit as of the date of separation from service.
- (3) Thus, when the limitations applicable to DB plans under ERISA became effective, the benefits of those individuals who were active participants in DB plans before 10/3/73, were protected and would not be treated as exceeding IRC 415(b) to the extent permitted under conditions a, b, and c above.
- (4) A transitional rule was also applied to individuals who participated in both a DB plan and a DC plan of the same employer. Under this rule, the otherwise applicable limitation to such individuals' benefits and contributions under IRC 415(e) as enacted by ERISA was assumed to be satisfied provided benefits were not increased, in the case of a DB plan, nor contributions made, in the case of a DC plan, after the date of enactment.

4.72.6.3.9.2 (12-01-2002)

**TEFRA
Protected
Benefits**

- (1) Limitations on benefits and contributions under qualified retirement plans were reduced by TEFRA, effective for limitation years beginning in 1983. TEFRA did not change the compensation limitation but modified the dollar limitation applicable to DB plans (which with COLAs had increased to \$136,425, effective 1/1/82) in the following ways:
 - a. Reduced the maximum annual benefit to the lesser of \$90,000 or 100% of the participant's high-3-year compensation;

- b. Provided that the dollar limitation was actuarially reduced if benefits commenced before age 62 (the 100% of high-3-year compensation limitation applies regardless of the age benefits commence);
 - c. Provided that the dollar limitation may be increased if the benefit commences after age 65 (no adjustment is made to the compensation limitation);
 - d. Restricted the actuarial assumptions used to compute these adjustments; and
 - e. Restricted the actuarial assumptions that can be used for adjustment of both the dollar limitation and the compensation limitation if a benefit is paid in a form other than a single life annuity.
- (2) Section 235(g) of TEFRA provided certain transitional rules related to these new limitations. The new requirement that the \$90,000 dollar limitation be actuarially reduced for commencement prior to age 62 was not applied to reduce the dollar limitation at any age on or after age 55 below \$75,000. In addition, if the benefit commenced prior to age 55, the applicable dollar limitation was not reduced below the amount that was actuarially equivalent to an annual benefit of \$75,000 commencing at age 55.
- Note:** The \$75,000 limitation in the exceptions is not increased for subsequent changes in the cost of living effective under IRC 415(d). Because the \$90,000 in the general rule was to be adjusted for such changes, the exception would, eventually, cease to have any effect.
- (3) Section 235(g)(4) of TEFRA also protected a participant's "current accrued benefit" in a DB plan as it existed on 7/1/82, provided the plan satisfied IRC 415 before TEFRA, from reduction as a result of such amendments.
- (4) Notice 83-10 provides information in question and answer form relating to these amendments and transition rules. Q&A T-3 of Notice 83-10 provides that benefits accrued as of the TEFRA effective date (the last day of the limitation year beginning in 1982) are protected for a DB plan in existence on 7/1/82, which satisfied IRC 415 before TEFRA, provided that the accrued benefit is determined without regard to changes in the plan after 7/1/82, and without regard to cost-of-living increases occurring after 7/1/82. This question and answer also states that the protection afforded to such current accrued benefit also extends to optional benefit forms or early retirement benefits provided under the plan on 7/1/82.
- (5) TEFRA also reduced the dollar limitation applicable to DC plans and made changes in the operation of IRC 415(e). These changes are explained in Notice 83-10.

Example 26

Mr. King's "current accrued benefit" under a DB plan, Plan T, on the TEFRA effective date was \$120,000, payable as a joint and 50% survivor annuity at the Plan's normal retirement age of 62. The plan year and limitation year for Plan T are both the calendar year. Under the terms of Plan T in effect on 7/1/82, should Mr. King decide to retire early at age 55, he could receive an early retirement benefit of \$100,000, in the form of a joint and 50% survivor annuity. Mr. King attained age 55 in 1985 and decided to retire early. Plan T satisfied the IRC 415 requirements before TEFRA. The dollar limitation under IRC 415(b) (as amended by TEFRA) otherwise applicable to Mr. King in 1985 is \$90,000 at age 62 and \$75,000 at age 55. His high-3-year average compensation limitation under IRC 415(b) for 1985 is \$130,000.

a. Is the annual early retirement benefit Mr. King can receive in 1985 restricted to \$75,000 or can he receive an annual benefit of \$100,000?

Solution. Mr. King's annual accrued benefit of \$120,000 at age 60 and early retirement benefit of \$100,000 at age 55 are two entries in an array of benefits for this participant defining the accrued benefit as computed on 12/31/82, payable at various ages and in the various forms provided under the terms of the plan. Each of the values for the accrued benefit on 12/31/82, in the various forms provided under the terms of the plan as of 7/1/82, would be protected under TEFRA section 235(g). Therefore, Mr. King can receive an annual benefit at age 55 of \$100,000.

NOTE: This protection applies only to the forms provided in the plan on 7/1/82. For example, if the plan was subsequently amended to improve the early retirement adjustment factors thereby increasing the early retirement benefit attributable to the \$120,000 accrued normal retirement benefit from \$100,000 to \$110,000, only the \$100,000 would be protected.

b. In 1986, retirees under Plan T received an ad hoc COLA of 5%. The IRC 415(b) dollar limitation, applicable at age 55, generally in effect for 1986 is the greater of: \$90,000 adjusted as provided under IRC 415(d), effective 1/1/86, actuarially reduced using assumptions permitted in IRC 415 to age 55; or \$75,000 without any COLA adjustment. Can Mr. King receive this 5% ad hoc COLA in 1986?

Solution. In 1986, or in later years, Mr. King cannot receive a benefit in excess of the IRC 415(b) dollar limitation in effect at the time, or if greater, his protected accrued benefit. The protected accrued benefit cannot increase beyond its value on 12/31/82. Therefore, Mr. King cannot receive the 5% COLA in 1986. Should the otherwise applicable IRC 415(b) limitation increase such that it was greater than Mr. King's protected accrued benefit, then it would be possible for Mr. King to receive such a COLA for retirees, provided that COLA did not cause Mr. King's benefit to exceed the general IRC 415(b) limitation then in effect.

4.72.6.3.9.3 (12-01-2002)

**TRA '86
Protected
Benefits**

- (1) TRA'86 changed the \$90,000 limitation applicable to DB plans by providing that it applied to benefit payments commencing at the participant's SSRA. The limitation is reduced where benefits commence prior to a participant's SSRA. The actuarial equivalence factors used in reducing the \$90,000 limit for benefits commencing prior to the SSRA were modified, and the \$75,000 floor for benefit payments commencing on, or after, the attainment of age 55 was eliminated. Thus, maximum benefits were generally reduced under TRA'86.
- (2) Section 1106(i)(3) of TRA'86 protects the "current accrued benefit" for any individual who is a participant in a DB plan as of the first day of the first limitation year to which the changes made by TRA'86 apply, provided the plan was in existence on 5/6/86, and satisfied the applicable IRC 415 limits for all limitation years before the TRA'86 changes in IRC 415 became effective.
- (3) Guidance, in the form of questions and answers, with respect to the new limitations on contributions and benefits under IRC 415 was provided in Notice 87-21. Q&A-12 of Notice 87-21 states that the rules in Notice 83-10 are to be used in determining if a plan was in existence on 5/6/86.
 - a. The "current accrued benefit" is the participant's accrued benefit as of the close of the last pre-TRA'86 limitation year (determined as if the individual separated from service as of the end of that year) but determined without regard to changes in the terms and conditions of the plan or cost-of-living increases occurring after 5/5/86. The current accrued benefit includes optional benefit forms and early retirement benefits or retirement-type subsidies that are protected under IRC 411(d)(6).
 - b. Q&A-12 also provides that if the protected current accrued benefit for a participant is larger than the applicable IRC 415(b)(1)(A) limit, as amended by TRA'86, such limitation shall equal the protected accrued benefit in applying the IRC 415(b) limitation, and 415(e) limitation (for limitation years beginning before 2000).
- (4) The general considerations to be applied in recognizing a "protected accrued benefit" are the same as those discussed in detail under the prior section dealing with TEFRA changes. Of course, any protected benefit under TEFRA remains part of the protected benefit under TRA'86.

Example 27

As of the end of the last pre-TRA '86 limitation year, Mr. Jackson, a participant in a DB plan, Plan M, for 15 years had an accrued benefit of \$90,000 per year, payable as a life annuity commencing at age 62, or as a fully subsidized qualified joint and 100% survivor annuity for married participants. (Mr. Jackson's high-3-year average compensation at the end of 1986 was \$125,000.) The normal retirement age under the plan is age 65, but early retirement benefits are available as early as age 62 with no actuarial reduction, provided the participant has at least 15 years of service at age 62. Mr. Jackson's benefit satisfied the IRC 415(b) limit applicable to him immediately prior to the effective date of TRA '86. Plan M satisfied the conditions listed in Q&A-12 of Notice 87-21 for Mr. Jackson's benefit to be a "protected current accrued benefit". Plan M has a calendar year plan year and limitation year. Mr. Jackson will attain age 62 in 1987 and would like to retire. What is the IRC 415(b) limit applicable to Mr. Jackson in 1987?

Solution. In general, beginning with the first limitation year beginning after 1986, the dollar limitation applicable to a participant commencing benefits at age 62 (which would be prior to their SSRA) must be reduced according to the reduction factors included in Notice 87-21. In this case, where the participant's SSRA is 65, the 1987 dollar limitation (\$90,000) would be reduced for commencement of benefits at age 62 by multiplication by 0.8 $[1 - (5/9)(.01)(36)]$, to equal \$72,000. (See also Examples 12 and 13.) Generally, should Mr. Jackson decide to retire in any year after 1986, the limit applicable to him will be the greater of (i) the currently effective limitation applicable to a participant commencing benefits at the applicable age (which would be the lesser of (a) the dollar limitation, adjusted as necessary for early commencement, form, or less than 10 years of participation, or (b) the participant's high-3-year average compensation, adjusted as necessary for less than 10 years of service) or (ii) his protected current accrued benefit as of the end of the last pre-TRA'86 limitation year [\$90,000 payable as a single life annuity (or as a fully subsidized qualified joint and 100% survivor annuity for married participants) commencing at age 62]. Accordingly, in 1987 Mr. Jackson may receive \$90,000 per year, payable as a single life annuity or, if married, as a fully subsidized joint and 100% survivor annuity.

4.72.6.3.9.4 (12-01-2002)
RPD '94 (GATT)
Old-Law
Benefits

- (1) IRC 415(b)(2)(E) was amended under RPA '94 (GATT) as amended by SBJPA, with such changes generally effective on the first day of a plan's first limitation year beginning in 1995. However, sponsors of plans in existence on December 7, 1994, and which met the requirements of IRC 415 on that date, could protect the methodology used under IRC 415(b)(2)(E) to determine a participant's accrued benefit as of a certain date (a participant's RPA '94 (GATT) freeze date) which must be a date before the date the IRC 415(b)(2)(E) changes (under GATT as amended by SBJPA) are effective for the plan (the plan's final implementation date) which must be a date on or before the first day of the first limitation year beginning after 1999. Rev. Rul. 95-29 provided guidance on the RPA '94 (GATT) changes prior to GATT's amendment by SBJPA. Rev. Rul. 98-1 modified and superseded Rev. Rul. 95-29, and provided guidance and transition rules for the IRC 415 changes under GATT as amended by SBJPA. See 4.72.6.3.4.3.4 for more explanation and examples of these transition rules.

4.72.6.3.10 (12-01-2002)

**Examination
Steps**

- (1) Where a participant is receiving his or her benefits in the form of a non-cash distribution, does the amount spent by the plan to purchase any contract(s) for the participant exceed the maximum distribution permissible under IRC 415(b)?
- (2) Where a participant's benefit is provided by an annuity contract,
 - a. Are the benefits in the various distribution forms and ages permitted under the contract in compliance with IRC 415(b)?
 - b. Under the contract, do all available distributions, including single-sum distributions, premium refunds, and dividends, satisfy the IRC 415(b) limitation applicable to the individual?
- (3) Where springing cash value life insurance policies are purchased by a plan, do cash surrender values and any other available distributions such as premium refunds for any individual exceed the maximum distribution permissible under the terms of the plan and the IRC 415 limitation applicable to the individual?
- (4) For purposes of applying the limitations of IRC 415(b) where a participant's benefit is to be provided by a variable annuity contract, is the initial benefit under the contract adjusted properly using actuarial assumptions or adjustment factors that satisfy IRC 415(b)(2)?
- (5) When examining a plan for compliance with IRC 415(b), be sure to take grandfathered benefits into consideration:
 - a. For DB plans in existence before 10/3/73, for those participants with benefits protected under ERISA which exceed the currently applicable IRC 415(b) limitation, make certain that the correct limitation is applied to each individual;
 - b. For DB plans in existence on 7/1/82, for those participants with benefits protected under TEFRA which exceed the currently applicable IRC 415(b) limitation, make certain that the correct limitation is applied to each individual; and
 - c. For DB plans in existence on 5/6/86, for those participants with benefits protected under TRA '86 which exceed the currently applicable IRC 415(b) limitation, make certain that the correct limitation is applied to each individual.
 - d. For DB plans in existence on 12/7/94, where a participant has an RPA '94 old-law benefit, determine that the old-law benefit is calculated using the correct assumptions under IRC 415(b)(2)(E), and that the methodology used to determine satisfaction of IRC 415(b), where part of a participant's benefit is an RPA '94 old-law benefit, satisfies one of the three methods (plan terms should state which of the three methods is used) described in 4.72.6.3.4.3.4.

4.72.6.4 (12-01-2002)

**Funding and
Deductibility**

- (1) TEFRA added IRC 404(j)(1) and (2) to the Code. For DB plans, IRC 404(j)(1)(A) provides that benefits in excess of the IRC 415 limits for any year will not be taken into account in determining the deductible limits under IRC 404 for that year.

- a. Although the TEFRA amendments to IRC 404 limit the amounts considered for determining deductible limits, there is no similar provision in IRC 412, which prescribes minimum funding requirements. In general, under IRC 412, all liabilities provided under the plan must be taken into account for minimum funding purposes. See Reg. 1.412(c)(3)-1(c)(1).
 - b. Accordingly, where a plan document provides for benefits that exceed the limitations of IRC 415 a plan contribution may be required in order to avoid a funding deficiency, that is not deductible under IRC 404(j).
- (2) Note, however, as stated in Q&A F-1 of Notice 83-10, IRC 404(j) does not prohibit the deductible limit from reflecting costs based on a reasonable projected benefit.

4.72.6.4.1 (12-01-2002)

Limiting the Projected Benefit

- (1) The benefit projected to be payable at the assumed retirement age (for funding purposes) must be subject to appropriate limitations under IRC 415(b) (i.e., the lesser of the currently effective applicable dollar limitation or 100% of projected high-3 average compensation). Several considerations apply when determining the appropriate limitations that apply to the projected benefit. We will consider issues relating to the dollar limitation and the compensation limitation separately.

4.72.6.4.1.1 (10-22-2002)

Dollar Limitation

- (1) For purposes of limiting the projected benefit at each assumed retirement age and in each assumed form of distribution, the dollar limitation must be adjusted for the assumed age of commencement and the assumed form of benefit using assumptions that satisfy IRC 415(b)(2)(E).
- (2) Where an individual has a protected accrued benefit under one of the transitional rules, the protected accrued benefit, payable under the terms of the plan as they existed prior to the effective date of the legislation triggering the transitional rule, must be compared to the current dollar limitation applicable at each expected retirement age and for each assumed benefit form, and the greater of the two amounts is the applicable projected limitation.

4.72.6.4.1.1.1 (12-01-2002)

Automatic COLA Adjustments

- (1) Reg. 1.415-5(c) provides that a DB plan may include a provision that automatically adjusts the maximum dollar limitation each year for scheduled cost-of-living increases as they are effective under IRC 415(d). However, such provisions may only provide for scheduled annual increases in the dollar limitation that become effective no sooner than the date the adjusted IRC 415(b)(1)(A) dollar limitation becomes effective. Scheduled future increases for calendar years beginning after the current plan year may not be effective in that plan year. Therefore, a reasonable funding method may not anticipate these benefit changes. See Reg. 1.412(c)(3)-1(d).

Example 28

When funding for the 1998 plan year, regardless of potential future cost-of-living increases, the benefit assumed payable in any future year may not exceed \$130,000 (the IRC 415(b)(1)(A) dollar limitation in effect 1/1/98) in the form of an annual single life annuity. (See Rev. Rul. 81-195, 1981-2 C.B. 104.) Of course, if the participant has a protected accrued benefit in excess of this limit, that amount may be assumed payable, but such protected benefit may not be adjusted for any COLA increases whether or not they are effective under IRC 415(d) for the current plan year.

- (2) Where the plan year is other than a calendar year, Rev. Rul. 81-215, 1981-2 C.B. 106, provides that increases in the maximum dollar benefit assumed accrued or payable for funding purposes may take into account the adjusted dollar limitation effective under IRC 415(d) on any day of the plan year in full.

Example 29

If the last day of the plan year is 1/31/97, plan costs for that year may be entirely based on projected annual benefit amounts of \$125,000, the dollar limitation effective 1/1/97. Alternatively, as provided in Rev. Rul. 77-2, 1977-1 C.B. 120, the increase may be recognized only for the portion of the plan year subsequent to the effective date of the increase. The plan's treatment of such scheduled increases is a part of the plan's funding method and must be consistently applied unless a change in method is approved for the plan.

4.72.6.4.2 (12-01-2002)

**Compensation
Limitation**

- (1) Reg. 1.412(c)(3)-1(c) requires that the salary reflected in projected benefits under a reasonable funding method must be the projected salary on which benefits would be based under the plan at the age when benefits are expected to commence. If a qualified plan provides benefits based on compensation at separation from service, costs may be based on projected benefits that reflect the expected salary history of a participant to that age, even if those projected benefits exceed the current high-3-consecutive-year average compensation. This is in accordance with Q&A F-1 of Notice 83-10 which provides that the deductible limit for a plan may reflect costs based on a reasonable projected benefit exceeding 100% of a participant's current high-3-year compensation (as long as the benefit does not exceed 100% of projected high-3-year compensation).

Note: There are no age adjustments to the compensation limitation for active participants under IRC 415(b)(1)(B).

4.72.6.4.3 (12-01-2002)

Adjusting IRC 415(b) Limit for Benefits in Other Plans of Employer

- (1) Plan provisions must preclude the aggregated benefits under all DB plans of the employer from exceeding the IRC 415(b) limitations. Plan provisions must be specific as to how and in which plan accruals will be limited to satisfy this requirement.
 - a. For funding purposes, projected benefits under all plans must be taken into account using reasonable actuarial assumptions and in accordance with the provisions of the plan(s). Funding computations must incorporate any required adjustments.
- (2) For limitation years beginning before 2000, where the benefits in the DB plan are limited because of allocations in a DC plan maintained for the same employee, special considerations apply under IRC 415(e).
- (3) Additionally, for limitation years beginning before 2000, with respect to deductibility of plan funding costs where an employee is a participant in both a DB plan and a DC plan maintained by the same employer, the deductible limit for the DB plan may reflect costs based on a reasonable projected DC fraction lower than the participant's current DC fraction (as long as the projected DC fraction does not anticipate future increases in the DC dollar limitation). See Q&A F-1 of Notice 83-10.

4.72.6.4.4 (12-01-2002)

Examination Steps

- (1) Where benefits in excess of the IRC 415(b) or (for limitation years beginning before 2000) IRC 415(e) limitations are provided under the terms of the plan, determine whether contributions for such benefits have been made and deducted in violation of IRC 404(j).
- (2) Where it is determined on plan examination that a participant's projected benefit for funding purposes exceeds the IRC 415(b) limitation applicable to the participant at the expected distribution date, determine whether the plan has funded and deducted for such benefit in violation of IRC 404(j).
- (3) Are COLA increases in the dollar limitation anticipated for any purpose under the plan?
- (4) Where participants' benefits under a plan are based on final average salary and costs are therefore based on reasonable projected benefits, are projected benefits, which may in this case exceed an individual's currently applicable compensation limitation, limited to the lesser of the participant's projected high-3-year compensation or the currently effective dollar limitation applicable to the individual?

Exhibit 4.72.6-1 (12-01-2002)
Appendix A — Annuity Factors

Following is a discussion on computing an "annuity factor" equivalent to the cost of a \$1 per year straight life annuity, or equivalent to the cost of a \$1 per year straight life annuity which is paid monthly in installments of 1/12 of a dollar.

A straight life annuity is an annuity payable over one life, having no special payment features such as a period certain.

The discussion is provided as background for the examples in the text. It is not meant to be all inclusive and only provides information. For agents who wish further information on annuity factors (such as information on joint and survivor annuities or annuities with a certain feature), such additional information and/or assistance should be sought from the field actuary, an excellent resource person on actuarial matters.

Symbolism

(1) The following symbols represent annuity factors equivalent to the cost at age "x" of a straight life annuity providing payments of \$1 per year for life, beginning at age "x". Those which use an "upper 12" in parentheses are paid monthly, in payments of 1/12. An annuity factor is generally expressed in the form of the first two symbols below. The second two symbols are expressed in terms of "commutation functions" which are explained later in the discussion. The first and third symbols are equivalent, as are the second and fourth symbol.

$$\ddot{a}_x, \quad \ddot{a}_x^{(12)}, \quad \frac{N_x}{D_x} \quad \text{and} \quad \frac{N_x^{(12)}}{D_x}$$

(2) If a 12 is shown beside (meaning multiplication by 12) one of the symbols with an "upper 12", then the monthly payments will be \$1 (since $12 \times 1/12 = 1$). Thus, the following symbols, which are equivalent, represent the cost at age "X" of a straight life annuity of \$1 per month, commencing at age "X".

$$12\ddot{a}_x^{(12)} \quad \text{and} \quad \frac{12N_x^{(12)}}{D_x}$$

(3) Sometimes the expressions "deferred annuity", "annuity due" and "immediate annuity" are used. When an annuity consists of a series of payments commencing at the beginning of the payment period, the annuity is called an "annuity-due". Two symbols for a \$1 per year annuity-due commencing at age 65 (beginning of year) and valued at age 65 are (1) \ddot{a}_{65} , and (2) (N_{65} / D_{65}) . Each annuity shown in (1) and (2) above is an annuity-due.

(4) When the first payment under an annuity is to be made at the end of a payment period, the annuity is called an "immediate annuity". Thus, a \$1 per year immediate annuity for a person aged 65 would not be paid until the end of the payment period (which could be thought of as the beginning of the next payment period), and the appropriate symbols denoting such an annuity (being valued at age 65) would be (1) a_{65} (notice that no "umlaut" is used over the "a" for this annuity), and (2) (N_{66} / D_{65}) (since the payments begin at the end of the 65th year which could be thought of as the beginning of the 66th year). The following are more general symbols for immediate annuities.

$$a_x, \quad a_x^{(12)}, \quad \frac{N_{x+1}}{D_x} \quad \text{and} \quad \frac{N_{x+1}^{(12)}}{D_x}$$

Exhibit 4.72.6-1 (Cont. 1) (12-01-2002)
Appendix A — Annuity Factors

Commutation
 Functions Based
 On A Particular
 Mortality Table

(5) A “n” year deferred annuity is one in which the first payment does not occur for “n” years. Thus, the first payment to a person who, on attaining age 60, purchases a five year deferred annuity-due, paid annually or monthly, would not commence until the person attains age 65. The first payment to the same person under a five year deferred immediate annuity, paid annually, would not begin until the person attains age 66. Because the payments under an immediate annuity which is paid monthly are payable at the end of the month (the end of the payment period, which could also be thought of as the beginning of the next payment period), payments to the same person described above under a five year deferred immediate annuity, paid monthly, would not commence until the person attained age 65 1/12 years.

(1) To calculate an annuity factor, which is the cost of a \$1 per year straight life annuity (or a \$1 per month straight life annuity), a mortality table and an interest rate must be specified.

(2) A mortality table is a table showing life and death statistics for a population of people. It shows how many are alive at each age at the beginning, and at each successive year, and from these figures general probabilities of living and dying at the various ages are determined. A mortality table can consist of one page.

(3) Very loosely and generally explained, the cost of a \$1 a year annuity is equal to the sum of the present values of each of the \$1 payments expected to be made, taking into account the probabilities of living to each age and then discounting each \$1 payment times the applicable probabilities, using the assumed interest rate for discounting, back to the age at which the cost of the annuity is being calculated.

(4) Using the probabilities of living to, or dying by, a particular age from a mortality table and an assumed rate of interest earnings, commutation functions are derived using actuarial formulas.

a. The commutation functions which are used to derive straight life annuity factors are generally given in the form of N_x , $N_x^{(12)}$, and D_x . The “x” in N_x , and $N_x^{(12)}$ is the age at which the straight life annuity commences, and the “x” in D_x is the age at which the cost is valued, and for each expected payment at an individual age, the probability of living to such age and the discount factor to be applied from such age to the age at which the cost is being determined are incorporated, and the sum of the values over all of the possible ages is the total cost.

b. The tables of commutation functions were generated to facilitate “table look-ups” of these values in days before the widespread use of individual personal computers (PCs).

c. The annuity values can also be derived using a direct, mathematical formula and a PC. The field actuary will perform such a calculation upon request.

d. Because an unlimited number of interest rates can be assumed, an infinite or unlimited number of commutation functions are possible using a particular mortality table.

(5) For ease in explaining the methodology, we will use only the commutation functions which are derived from the UP-1984 Mortality Table when an interest rate of 8% is assumed.

Exhibit 4.72.6-1 (Cont. 2) (12-01-2002)
Appendix A — Annuity Factors

Methodology

(1) To calculate the cost or present value at age 50 of a \$1 per year straight life annuity commencing at age 50, using the UP-1984 table and an assumed interest rate of 8%, the appropriate figure from the NX column is divided by the appropriate figure from the DX column. The appropriate figure for NX would be found by reading across from the age at which the annuity is to start to the NX column, and the appropriate figure for DX would be found by reading across from the age of the annuitant at the time the present value is being determined to the DX column. Where the annuity is being valued at the age it is to commence, the same age (50) is being used for NX and DX. The annuity factor is equal to 17096.8122 (NX, using $x = 50$) divided by 1538.9699 (DX, using $x = 50$), which equals 11.109 if the quotient is rounded to three decimal places. For purposes of the table, NX and DX are equivalent to the symbols N_x and D_x .

(2) If the straight life annuity (again being valued at age 50 and commencing at age 50) is an annuity-due paid monthly in payments of $1/12$, then the annuity factor would be equal to $NX(12)$ divided by DX. This would equal 16391.4510 ($NX(12)$, using $x = 50$) divided by 1538.9699 (DX, using $x = 50$), which equals 10.651 when rounded to three decimal places. For purposes of the table, the symbol $NX(12)$ is equivalent to the symbol $N_x^{(12)}$.

(3) If the straight life annuity-due being valued at age 50 and commencing at age 50 was a \$1 per month annuity, the cost of such annuity would be 127.81 (12 times the cost of the \$1 per year annuity, paid monthly, or 12×10.651). Where the age at which the present value is being determined is the same as the age at which the annuity is to commence, and the annuity is a \$1 per month annuity, the quotient of $12NX(12)/DX$ will be the same as the number across from this age in the $12AX(12)$ column. For purposes of the table, $12AX(12)$ is equivalent to the symbol $12\ddot{a}_x^{(12)}$.

(4) If a \$1 per year straight life annuity (annuity-due), paid monthly, commences at one age (X), and is being valued at a different age (Y), then the number in the $NX(12)$ column across from age X is divided by the number in the DX column across from age Y . For example, suppose the cost of a straight life annuity (annuity-due), payable monthly and commencing at age 65, is being determined when the annuitant is age 60. Using the commutation functions derived using the same mortality table and interest rate, the annuity factor is equal to 3334.1842 ($NX(12)$ when $x = 65$) divided by 651.8463 (DX when $x = 60$), which is equal to 5.115 when rounded to 3 decimal places. Of course if given in terms of money, it would be \$5.11 (since it had been 5.1149852).

(5) EXAMPLE 16 in part one, step one, uses an annuity factor of 9.133 which is derived using the UP-1984 table and 8%. From the symbolism used, the annuity is a \$1 per year straight life annuity (annuity-due), paid monthly, commences at age 60 and is being valued at age 60. To calculate the annuity factor, 5953.3718 ($NX(12)$ when $x = 60$) is divided by 651.8463 (DX when $x = 60$), which is equal to 9.133 if rounded to 3 decimal places.

Exhibit 4.72.6-1 (Cont. 3) (12-01-2002)**Appendix A — Annuity Factors**

Other Symbols (1) In general, the symbol

$$\frac{N_x}{D_y}$$

refers to a \$1 per year annuity which commences at age x, and is being valued at age y. When the symbol is a quotient of two Ds, such as

$$\frac{D_x}{D_y}$$

this is the fraction which discounts a value computed at age x, using interest and mortality, to a value at age y. In the same Example 16 in the guidelines, the fraction D_{62} / D_{60} is used to discount, using interest and mortality, from age 62 to age 60.

NOTE: The calculation of an annuity factor which is the cost of an immediate annuity, paid monthly, is more complicated, requiring the use of an interpolation formula in addition to the commutation functions normally used to calculate annuity factors, and is beyond the scope of this discussion. The agent wanting more information/help in this area should contact the area actuary.

Additional
Comments

(1) The referenced tables with commutation functions and specific assumed interest rates are not unique. Another table based on the same mortality table and interest rate may appear different (i.e. have different numbers in the columns) but should yield the same annuity factors when the appropriate division is done. This could be due to slight variances in the algorithms used by the computer in generating the numbers, different numbers of decimal places used, different population size, or other reasons. Additionally, a table of commutation functions may show columns of commutation functions other than the ones discussed in this appendix. These commutation functions are not used in the guideline or in this discussion, although they are used for other purposes.

(2) Because the commutation functions are included in spread sheets, we are unable to include them as part of these guidelines. See the area actuary for the referenced commutation functions.

Exhibit 4.72.6-2 (12-01-2002)
Appendix B — Actuarial Equivalence

What does it mean to say that two benefits are actuarially equivalent?

Basically, it means that, valued at the same point in time, they are equal to the same amount. In order to determine if two benefits are actuarially equivalent, typically one benefit is first converted to a single sum, then taken to the same point in time (same age) as the other benefit, and then converted back into a benefit. To convert a single life annuity benefit to a single sum (and to actuarially move a single sum forward or backwards) a mortality table and interest rate must be specified. The benefit is multiplied by the cost of a \$1 annuity, payable either annually or monthly, with such annuity factor determined using the specified mortality table and interest rate. See Appendix A for further explanation of annuity factors.

Example 1

Using the UP-1984 Mortality Table and an 8% interest assumption, determine whether a single life annuity benefit of \$97,981, payable monthly and commencing at age 62, is actuarially equivalent to a \$78,288 single life annuity benefit commencing at age 60?

Solution. To determine whether they are actuarially equivalent, both benefits must be valued at the same point in time, at age 62 (age 60 could also have been used). To value the age 60 benefit at age 62, it must be converted to a single sum by multiplying it by an age 60 annuity factor, derived using the specified interest rate and mortality table. The age 60 annuity factor

$$\frac{N_{60}^{(12)}}{D_{60}}$$

derived using the UP-1984 Mortality Table where an interest rate of 8% is used, is 9.133. The single sum at age 60 which is equivalent to the single life annuity benefit is \$715,004.30 ($9.133 \times \$78,288$). The single sum is advanced forward, using interest and mortality, by multiplying it by D_{60} / D_{62} which, when derived using the same mortality table and interest rate, equals 1.2018. The single sum \$715,004.30 at age 60 is equal to the single sum \$859,292.17 ($\$715,004.30 \times 1.2018$) at age 62. [If no mortality is used, the single sum is advanced using interest only by multiplying it by $(1.08)^2$.] To convert the single sum at age 62 to a single life annuity benefit commencing at age 62, the single sum is divided by an age 62 annuity factor

$$\frac{N_{62}^{(12)}}{D_{62}} = 8.770$$

and the quotient is \$97,980.86 ($\$859,292.17 / 8.770$). Thus, a benefit of \$97,981, payable monthly at age 62 is actuarially equivalent at age 60 to a benefit of \$78,288, payable monthly, when the UP-1984 Mortality Table and an interest rate of 8% are used.

Example 2

If the IRC 415(b) dollar limitation applicable to a participant at age 62 is \$67,500 (which is an annual single life annuity), what single life annuity benefit commencing at age 60 is actuarially equivalent to the age 62 single life annuity benefit of \$67,500 when actuarial equivalence is determined using the UP-1984 Mortality Table and 5%?

Exhibit 4.72.6-2 (Cont. 1) (12-01-2002)
Appendix B — Actuarial Equivalence

Solution. First the single life annuity benefit of \$67,500 at age 62 is converted to a single sum by multiplying it by an age 62 annuity factor derived using the specified mortality table and interest rate. The annuity factor

$$\frac{N_{62}}{D_{62}}$$

equals 11.377, and the single sum is \$767,947.50 ($67,500 \times 11.377$). The single sum is then taken back to age 60 by multiplying it by

$$\frac{D_{62}}{D_{60}} = 0.8803$$

which equals \$676,024.18 ($\$767,947.50 \times 0.8803$). To convert the single sum at age 60 to an annual benefit at age 60, it is divided by an age 60 annuity factor

$$\frac{N_{60}}{D_{60}} = 11.954$$

which equals an annual benefit of \$56,552.13 ($\$676,024.18 / 11.954$). Thus, an annual benefit of \$56,552.13 payable at age 60 is actuarially equivalent to an annual benefit of 67,500 at age 62, when the UP-1984 Mortality Table and a 5% interest assumption are used.

Exhibit 2

EXHIBIT 2 -- REVISED

**SAN DIEGO CITY EMPLOYEES
RETIREMENT SYSTEM**

415(b), (c), and (n) Compliance Strategy Report

**Mary Beth Braitman
Terry A.M. Mumford
Katrina M. Clingerman
Ice Miller LLP
One American Square, Suite 3100
Indianapolis, IN 46282-0200**

Originally Issued: August 9, 2006

Revised: August __, 2007

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. IMPORTANCE OF CODE SECTION 415 COMPLIANCE.....	1
A. SDCERS as a Qualified Governmental Plan.....	1
B. Code Section 415 Limits	1
C. Final Regulations	2
III. OVERVIEW OF LAW WITH RESPECT TO DEFINED BENEFIT LIMITATIONS	2
A. Basic Benefit Limits.....	2
1. Current Limits	2
2. Limitation Year	2
B. TAMRA Election.....	3
C. Amounts Excluded from Testing	4
1. Ancillary Benefits.....	4
2. Qualified Excess Benefit Arrangement ("QEBA")	4
3. Allocation of Benefits to After-Tax Employee Contributions.....	5
4. Employee After-Tax Contributions for Permissive Service Credit	7
5. Picked-Up Contributions	9
6. Amounts Attributable to Rollovers	9
7. Amounts Attributable to Transfers between Qualified Plans	10
8. Plan-to-Plan Transfers from a 457(b) or 403(b) Plan.....	10
9. Restoration of Contributions.....	10
D. Age-based Adjustment to Limits	10
1. Benefits Before Age 62	10
2. Benefits After Age 65	12
E. Additional Special Rules	12
1. Small Benefits	12
2. Less than 10 Years of Participation.....	12
F. Optional Forms of Benefits – Benefits Other Than a Straight Life Annuity	13

1.	417(e)(3) Benefits and Non-417(e)(3) Benefits	13
2.	QJSA Benefits	14
G.	Cost-of-Living Adjustment of Code Section 415(b) Limits	14
H.	Consideration of an Alternate Payee's Benefits For Testing Purposes	15
I.	Testing of the Survivor Portion of a Benefit	15
J.	Aggregation of Total SDCERS Benefits for Testing Purposes	16
IV.	APPLICATION OF CODE SECTION 415(b) TO SDCERS AND RECOMMENDATIONS	16
A.	Plan Document Provisions	16
B.	Operational Compliance	16
1.	Definition of the Annual Benefit for 415(b) Testing	16
2.	TAMRA Election	18
3.	Age Adjustments Made in 415(b) Testing	18
4.	10-Year Adjustment	20
C.	Amounts Excluded from Testing	20
1.	After-Tax Employee Contributions	20
2.	Rollovers	23
3.	Transfers from a Qualified Plan	23
4.	Transfers from a 403(b) or 457(b) Plan	23
5.	Purchase of Service Chart	23
6.	401(h) Amounts	26
7.	Aggregation of Payments to Alternate Payees	26
D.	Classification of Employer Contributions	26
E.	Qualified Excess Benefit Arrangement ("QEBA")	27
F.	Conclusions Regarding Retrospective 415(b) Testing	27
1.	Definition of Tested Group – Post-1994 Group	27
2.	Additional Testing Group – Pre-1995 Group	28
3.	Payments of Excess Benefits from the Preservation of Benefit Plan	28
G.	Conclusions Regarding Prospective Testing	28
1.	Definition of Tested Group	28
2.	"Screens" Used in Testing	28
3.	Payments of Excess Benefits from POB Plan	29

V.	OVERVIEW OF LAW WITH RESPECT TO DEFINED CONTRIBUTION LIMITS	29
A.	The Dollar Limit on "Annual Additions"	29
1.	Current Limits	29
2.	The Limitation Year	30
3.	Code Section 415(k)(3): Repayment of Cash-Outs.....	30
4.	Testing of USERRA Service Purchases	30
5.	Code Section 414(v)	31
B.	Definition of Compensation	31
1.	General Rule	31
2.	Safe Harbor Definitions	32
3.	Treatment of Workers Compensation.....	33
C.	Service Purchases.....	34
D.	Analysis of All City Plans	35
VI.	APPLICATION OF CODE SECTION 415(c) TO SDCERS AND RECOMMENDATIONS.....	35
A.	Plan Document Provisions	35
B.	Testing of "Annual Additions"	35
1.	Plan Aggregation.....	35
2.	Definition of Compensation.....	35
C.	Conclusions Regarding Retrospective 415(c) Testing.....	36
D.	Conclusions Regarding Prospective 415(c) Testing	36
1.	Definition of Tested Group.....	36
2.	Testing of Service Purchases Made with After-Tax Employee Contributions	37
3.	Testing of Other After-Tax Employee Contributions	37
4.	USERRA Testing	37
5.	Compensation Definition.....	37
6.	Testing Protocol	37
7.	Priority	37
E.	Testing of Service Purchases – By Source.....	38
1.	SDCERS Provisions	38
2.	Compliance Testing Chart	39

F. Testing of USERRA Service Purchases.....	40
INDEX OF EXHIBITS	1
Exhibit A: Cheiron Report on Retrospective 415(b) Testing (Revised 8/16/07)	1
Exhibit B: Cheiron Report on Prospective 415 (b) Testing (Revised ____07).....	1

I.

INTRODUCTION

Ice Miller LLP ("Ice Miller") has been retained to provide a compliance review with regard to the Internal Revenue Code of 1986, as amended ("Code"), requirements applicable to the status of the San Diego City Employees' Retirement System ("SDCERS") as a qualified retirement plan under Code Section 401(a).

Ice Miller is not considering tax reporting and withholding under the Code nor any other federal law. We are also not deliberating any state law issues. Where state law must be considered, we are relying on interpretations provided by SDCERS counsel.

This report pertains to Code Section 415(b) and 415(c), and to Code Section 415(n) as it is related to 415(b) and 415(c). We have touched on Code Section 415(m) only with respect to the treatment of excess benefits under Code Section 415(b). We have prepared a separate briefing document for SDCERS on the topic of 415(m).

We have based this report on the material provided to us by SDCERS. We have not independently verified what has been provided to us. We are relying on SDCERS to provide us with documents, forms, and information necessary for this review.

This report was issued as part of the VCP supplement that was submitted to the IRS on August 9, 2006. In response to comments and questions by the IRS, this report has been revised. In addition, this report has been updated to reflect changes made by the Pension Protection Act of 2006 ("PPA") and the Final Regulations issued under Code Section 415 on April 5, 2007.

II.

IMPORTANCE OF CODE SECTION 415 COMPLIANCE

A. SDCERS AS A QUALIFIED GOVERNMENTAL PLAN

Retaining "qualified plan" status under Code Section 401(a) is an important requirement for retirement plans. The primary advantages in retaining "qualified" status are that (i) employer contributions are not taxable to members as they are made (even when vested) and taxation only occurs when plan distributions are made, (ii) earnings and income are not taxed to the trust or the members; (iii) certain favorable tax treatments are available to members when they receive plan distributions, e.g., ability to rollover amounts; (iv) employers may "pick up" employee contributions; and (v) employer contributions to, and benefits from, the plan are never subject to employment taxes (i.e., FICA taxes). These advantages would generally not apply to a non-qualified plan.

B. CODE SECTION 415 LIMITS

One key qualification requirement applicable to qualified plans is the Code Section 415 limits. Code Section 415 benefit and contribution limits must be followed to protect the tax qualified status of a retirement plan under Code Section 401(a). These limits must be met by all plan members. If even one member is paid an annual benefit greater than Code Section 415

Revised 8/20/07

allows, or contributes more than Code Section 415 allows, theoretically, the entire plan will be disqualified.

C. FINAL REGULATIONS

Final Regulations under Code Section 415 were issued by the IRS April 5, 2007. The Final Regulations are effective for governmental plans for all limitation years that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007. However, a governmental plan may apply the provisions of the Final Regulations as early as the limitation year beginning on or after July 1, 2007.

III. OVERVIEW OF LAW WITH RESPECT TO DEFINED BENEFIT LIMITATIONS

This Section of our Compliance Strategy Report provides an overview of the federal law with regard to Code Section 415(b). The impact of Code Section 415(b) on SDCERS and our specific recommendations for a compliance strategy are included in the next Section of this Report.

A. BASIC BENEFIT LIMITS

1. Current Limits

As amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the basic requirement of Code Section 415(b) is that the annual benefit in the form of a single life annuity provided to a member who is between the ages of 62 and 65 may not exceed the lesser of: (1) \$160,000 as adjusted for inflation in \$5,000 increments (the "Dollar Limit"), or (2) 100% of average compensation (the "Salary Limit"). Code Section 415(b)(1). The Salary Limit does not apply to governmental plans such as SDCERS. Therefore, the following discussion and our methodology do not include the Salary Limit.

2. Limitation Year

The annual benefit is tested in a "limitation year." Unless an election is made by the employer, the limitation year is the calendar year. Treas. Reg. § 1.415(j)-1. An employer that maintains more than one qualified plan may elect to use different limitation years for each such plan. Treas. Reg. § 1.415(j)-1(c).

Retrospectively, the IRS is requiring that SDCERS use a July 1 fiscal year for testing. The analysis of 415(b) limits in the context of the Fiscal Year is summarized in the following regulatory provision:

The adjusted dollar limitation applicable to defined benefit plans and the adjusted compensation limit applicable to a participant are effective as of January 1 of each calendar year and apply with respect to limitation years ending with or within that calendar year. However, benefit payments (and, in the case of plans that are

subject to the requirements of section 411, accrued benefits for a limitation year) cannot exceed the currently applicable dollar limitation or compensation limitation (as in effect before the January 1 adjustment) prior to January 1. Thus, where there is an increase in the limitation under section 415(b)(1), any increase in a participant's benefits associated with the limitation increase is permitted to occur as of a date no earlier than January 1 of the calendar year for which the increase in the limitation is effective, and can only be applied for payments due on or after January 1 of such calendar year. For example, assume that a participant in a defined benefit plan is currently receiving a benefit in the form of a straight life annuity, payable monthly, in an amount equal to the section 415(b)(1)(A) dollar limit, and the defined benefit plan has a limitation year that runs from July 1 to June 30. If the plan is amended to reflect the section 415(d) increase to the section 415(b)(1)(A) dollar limit that is effective as of January 1, 2009, the associated increase in the participant's monthly benefit payments is only effective for payments due on or after January 1, 2009, and the participant's benefit cannot be increased to reflect the section 415(d) increase that is effective January 1, 2009, with respect to any monthly payment due prior to January 1, 2009.

Treas. Reg. § 1.415(d)-1(a)(3) (emphasis added). Applying this regulation to the SDCERS situation, we come up with the following example:

As of July 1, 2005, the limitation on the annual benefit is \$170,000, but assume that the member's annual benefit for the Fiscal Year would be \$175,000 under the applicable formula. (For purposes of this example we are assuming a single straight life annuity with no after-tax contributions and no rollovers to consider.) The monthly benefit that is paid from July 1, 2005, through December 31, 2005 cannot exceed 1/12 of \$170,000. However, starting January 1, 2006, when the annual limit goes to \$175,000, the monthly benefit can increase so it is 1/12 of \$175,000. Under this approach, no excess would be paid out of an excess benefit plan in 2005 and the make-up payment would be paid in 2006.

Prospectively, as of January 1, 2008, SDCERS will move to a calendar year for 415 testing, assuming a technical ordinance is adopted to amend the San Diego Municipal Code.

B. TAMRA ELECTION

Section 415(b)(10) of the Code was added by the Technical and Miscellaneous Revenue Act of 1988 (sometimes called TAMRA) to offer state and local government plans a means of complying with the Section 415 limits without violating state anti-cutback laws. Under this Section, the defined benefit limit for an employee who became a participant in the plan before January 1, 1990, would not be less than his or her accrued benefit determined without regard to any plan amendment adopted after October 14, 1987. However, for a state or local government to take advantage of Section 415(b)(10), each employer maintaining the plan was required to elect, before the close of the plan year beginning in 1990, to apply the defined benefit limits applicable to private plans to employees who first became participants after 1990. However, there were also special provisions for state-wide statutory changes. For plans that made a TAMRA election, the qualified participants would still have their TAMRA protection.

Revocation of a TAMRA election is permitted pursuant to Code Section 415(b)(10)(C)(ii), effective for all plan years to which the election applied and to all subsequent plan years, provided the revocation is accomplished by the last day of the third plan year beginning after August 20, 1996.

C. AMOUNTS EXCLUDED FROM TESTING

For purposes of Code Section 415(b), the annual benefit means the benefit payable annually in the form of a straight life annuity (with no ancillary benefits), without considering payments made from a qualified excess benefit arrangement, after-tax employee contributions, and any rollover contributions. Code Section 415(b)(2).

1. Ancillary Benefits

"Ancillary benefits" do not count toward the benefits subject to Code Section 415. As a result, any benefit that is an ancillary benefit can exceed the 415 limits without the plan being disqualified. Generally, "ancillary benefits" are benefits not directly related to retirement income benefits. Ancillary benefits include "pre-retirement disability benefits and death benefits (such as in-service death benefits)." Code Section 415(b)(2)(B); Treas. Reg. § 1.415(b)-1(c)(4).

a. Pre-Retirement Disability Benefits

Pre-retirement disability benefits "not in excess of the qualified disability benefit" may be disregarded for purposes of 415(b) testing. However, any pre-retirement disability benefits which exceed the "qualified disability benefit" limitations established in Code Section 411(a)(9) must be included in the benefit tested against the 415(b) limitation. Treas. Reg. § 1.415(b)-1(c)(4)(i)(B). In contrast, post-retirement disability benefits must be taken into account for purposes of complying with the Code Section 415 limitations. Thus, (1) pre-retirement disability benefits which exceed the qualified disability benefit, (2) post-retirement disability benefits, (3) line of duty disability benefits paid post normal retirement date, and (4) pre-retirement disability benefits payable post normal retirement age will be tested under Code Section 415(b).

b. Pre-Retirement Death Benefits

Pre-retirement death benefits provided under a governmental plan are also exempt from the Code Section 415 limits. Treas. Reg. § 1.415(b)-1(c)(4)(i)(B). The Final Regulations make it very clear that pre-retirement death benefits must meet the incidental benefit requirements of Code Section 401 and the regulations thereto in order to be excluded from 415(b) testing. Generally speaking, death benefits are incidental where the plan provides a pre-retirement death benefit that is no greater than 100 times the monthly annuity benefit provided under the plan, or the cost of the death benefit does not exceed 25% of the total cost of all benefits for that participant. (This latter test would be one that would be analyzed by an actuary.) Revenue Ruling 74-307, 1974-2 C.B. 126.

2. Qualified Excess Benefit Arrangement ("QEBA")

Effective for years after December 31, 1994, state and local government employers may maintain "qualified governmental excess benefit plans" ("QEBA") under Code Section 415(m).

Excess Plans are plans that provide benefits that cannot be provided under a qualified plan due to the limits on contributions and benefits. Excess Plans permit state and local government employers to provide benefits to their employees:

- (1) without jeopardizing plan qualification because of the limits on contributions and benefits under Code Section 415,
- (2) without jeopardizing a plan's status under Code Section 457 as an "eligible deferred compensation plan," and
- (3) without the income that accrues to the qualified governmental excess benefit plan being taxable to the plan's government sponsor.

As we have discussed, we will not be addressing Code Section 415(m) and QEBAs in detail in this report, but in a separate report. However, for the purposes of determining retrospective benefit testing protocols, we think that it is relevant to consider the following provisions that accompanied the enactment of Code Section 415(m):

Nothing in the amendments made by this section shall be construed to imply that a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) fails to satisfy the requirements of section 415 of such Code for any taxable year beginning before January 1, 1995.

P.L. 104-188, § 1444(c)(2). Under this grandfather section, retroactive testing for plan qualification purposes does not need to consider payments made prior to January 1, 1995.

3. Allocation of Benefits to After-Tax Employee Contributions

Treasury Regulation § 1.415(b)-1(b)(1)(ii) provides that the benefit attributable to "Employee Contributions" is not included in the benefit which is tested against the 415(b) limitation. In general, this is because these contributions are deemed to be annual additions and subject to Code Section 415(c) limits (discussed below in more detail). Therefore, because the benefits have already been tested under Code Section 415(c), any portion of a defined benefit attributable to those after-tax contributions may be subtracted from the annual benefit before it is tested under Code Section 415(b). However, it is important to note that benefits that would be attributable to excess 415(c) contributions would not be "subtracted" from the annual benefit for 415(b) testing purposes.

a. Definition of Employee Contributions

Only certain employee contributions are treated as Employee Contributions for purposes of 415(b) testing. In particular, the following items are not treated as Employee Contributions and therefore the benefit attributable to these items is included for purposes of 415(b) testing:

- Contributions picked up by the employer pursuant to Code Section 414(h).
- Any repayment of a loan from the plan to the participant.

- Certain repayments amounts previously distributed upon the participant's termination of participation in the plan.
- Certain repayments of a withdrawal of employee contributions.

b. Mandatory Employee Contributions

Treasury Regulation § 1.415(b)-1(b)(2)(iii) provides that the annual benefit attributable to mandatory contributions is determined by using the factors described in Code Section 411(c)(2)(B) "regardless of whether the requirements of sections 411 and 417 apply to that plan." Treasury Regulation § 1.411(c)-1(c) establishes the required method for allocating a portion of the defined benefit to the after-tax employee contributions for purposes of excluding this amount from the final annual benefit to be tested. The method requires calculation of the after-tax (not picked up) employee contributions (both mandatory employee contributions and any voluntary after-tax payments for service purchases unless tested under Code Section 415(n)), plus interest, at rates specified by the regulations. See Treas. Reg. § 1.411(c)-1(c). Generally, interest is computed at the rate provided by the plan until the last plan year before Code Section 411(a)(2) does not apply. Id. Thereafter, a plan should use a 5% interest rate factor.

In general, Code Section 411(a)(2) does not apply to a governmental plan, such as SDCERS. However, the Final Regulations provide that Code Section 411 should be treated as applicable to this calculation even if the section is not applicable to the plan. The Explanation of Provisions in the Final Regulations states that a plan not subject to Code Section 411(a)(2), such as a governmental plan, should determine what the effective date of Code Section 411(a)(2) would have been if 411 applied to the plan and then apply the specific interest rates appropriately. Therefore, only the benefit attributable to employer contributions using 411 factors can be excluded from 415(b) testing.

Treasury Regulation § 1.415(b)-1(b)(2)(iii) clearly indicates that the Code Section 411 factors should be applied to a governmental plan for purposes of determining the benefit attributable to employee contributions for purposes of Code Section 415(b) testing. The 411 factors are the following: for contributions prior to 1976, use the interest rate in the plan document, if any; for contributions between 1976-1987, use 5%; for contributions from 1988 through the date the benefit commences or the annuity starting date (the determination date), use 120% of the mid-term applicable federal rate; and for contributions from the determination date to the normal retirement date (the date at which unreduced benefits are paid), use the applicable 417(e) interest rate. For plan years beginning before January 1, 2008, the applicable 417(e) rate is the annual rate on 30-year Treasury securities for the month before the distribution. For plan years beginning on and after January 1, 2008, the applicable 417(e) rate is the adjusted first, second and third segment rates for the month before the distribution. The segment rates are based on the corporate bond yield curve based on varying maturities. The IRS announces all this monthly.

Thus, SDCERS must determine what the effective date of Code Section 411(a)(2) would have been, had that provision applied to SDCERS, and then apply the appropriate 411 factors from that date forward in order to determine the benefit attributable to after-tax employee contributions. For that purpose, the vesting rules of Code Section 411(a)(2) were generally

applicable to plan years beginning after September 1, 1976. However, for a plan in existence on January 1, 1974, Code Section 411(a)(2) was applicable for plan years beginning after 1975.

As noted above, this would be the same approach that would be followed in testing the benefit attributable to rollovers and transfers that are used to purchase service.

c. Voluntary After-Tax Contributions

Where a plan permits voluntary after-tax employee contributions, the portion of the plan to which such contributions are made is treated as a defined contribution plan. Therefore, voluntary after-tax contributions are subject to the 415(c) contribution limits and not the 415(b) benefit limits. Treas. Reg. § 1.415(b)-1(b)(2)(iv). The benefit attributable to voluntary after-tax contributions is not subject to 415(b) testing. However, that calculation is done using 411 factors as above.

4. Employee After-Tax Contributions for Permissive Service Credit

Code Section 415(n) establishes a limitation structure for "permissive service credit" purchases, instead of relying on the existing Code Section 415(c) defined contribution limitations. This subsection allows Code Section 415 to be satisfied by a purchase of permissive service credit if either a modified 415(b) limit is met or a modified 415(c) limit is met. These limits can be applied on a participant-by-participant basis rather than choosing to apply the limit on a plan-wide basis. For example, some participants could satisfy the modified defined benefit limit when making a purchase of permissive service credit, while others could satisfy the modified defined contribution limit.

a. Modified 415(b) Limit

For purposes of Code Section 415(n), the defined benefit limit in Code Section 415(b) may be met by treating the accrued benefit derived from all permissive service credit as part of the member's annual benefit. Code Section 415(n)(2)(A) provides that, where the dollar limit under 415(b) is reduced for retirement before age 62, "the plan shall not fail to meet the reduced dollar limit under Subsection (b)(2)(C) [the age-reduced dollar limit] solely by reason of this subsection." Thus, the plan will not fail to meet the age-reduced dollar limit solely because the accrued benefit derived from the permissive service credit purchase is included in the 415(b) test.

b. Modified 415(c) Limit

For purposes of Code Section, only the dollar limit under Code Section 415(c) applies (\$40,000 (adjusted for inflation)) by treating all permissive service contributions as an annual addition under that limit.

c. Definition of Permissive Service Credit

The special testing rules apply only if the service being purchased qualifies as permissive service credit. Code Section 415(n)(3) defines "permissive service credit" as follows:

- (3) PERMISSIVE SERVICE CREDIT.—For purposes of this subsection—

(A) IN GENERAL.—The term "permissive service credit" means service credit—

(i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,

(ii) which such participant has not received under such governmental plan, and

(iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

Code Section 415(n)(3)(A). The proper interpretation of the Code Section 415(n) definition of permissive service credit is not a settled term. The Final Regulations do not address 415(n) issues. However, the PPA did clarify that benefit enhancement purchases (buying a higher multiplier on service a member already has in a plan) or airtime purchases (buying service credit for a period for which there is no performance of service) both qualify as permissive service credit.

d. Nonqualified and Qualified Permissive Service

Permissive service credit can be categorized into two types. First, the Code defines "non-qualified service credit" as all permissive service credit that does not fall within one of the itemized types listed in Code Section 415(n)(3)(C). Although the Code does not use this term, we have termed the types of service included in this list as "qualified permissive service."

Code Section 415(n)(3)(C) defines "nonqualified service" as all permissive service except for the following types of service (which we have designated "qualified permissive service"):

- Service (including parental, medical, sabbatical, and similar leave) for the US government, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing.
- Service (including parental, medical, sabbatical, and similar leave) for an educational organization which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12) as determined under state laws.
- Service for an association of employees of the U.S., state or political subdivision thereof, or an agency or instrumentality of the foregoing.

- Military service (non-USERRA covered) recognized by the governmental plan.

However, service under the first three (3) points above will be nonqualified service if recognition of the service would cause the member to receive a retirement benefit for the same service under more than one plan. Code Section 415(n) does not permit a plan to take more than five (5) years of nonqualified service into account, or to give members credit for any nonqualified service before the member has at least five (5) years of participation in the plan. Code Section 415(n)(3)(B). The PPA clarified that these limits do not apply to trustee-to-trustee transfers from a 457(b) plan or a 403(b) plan for the purchase of permissive service credit.

It is important to note that "nonqualified service" is still one type of permissive service that is described in Section 415(n)(3)(A). Therefore, nonqualified service is available for purchase and may be tested under Code Section 415(n) special testing provisions.

e. Effective Dates

The service purchase testing provisions for permissive service credit under Code Section 415(n) are subject to a transition rule. The transition rule provides that the defined contribution limits of Code Section 415(c) will not be used to reduce the amount of permissive service credit an "eligible participant" can purchase below what they were allowed to purchase under the terms of the plan as in effect on the enactment date, August 5, 1997. An "eligible participant" is an individual who first becomes a participant in the plan before the first plan year beginning after the last day of the calendar year in which the next regular session (following the date of enactment) of the governing body with authority to amend the plan ends.

Because the term "permissive service" is used in the grandfather provision, we believe that the IRS would apply a consistent definition of permissive service credit to the transition rule. As a result, the transition provision could permit greater purchases of nonqualified service and could permit permissive service purchases that exceed 415(c) and (b) limits, but would not extend to the purchase of service that did not meet the definition of permissive service credit.

5. Picked-Up Contributions

It is important to note that pre-tax contributions ("picked-up contributions"), whether mandatory or voluntary, are not treated as post-tax contributions. The benefit attributable to picked-up contributions is subject to 415(b) testing. Treas. Reg. § 1.415(b)-1(b)(2)(ii)(A).

6. Amounts Attributable to Rollovers

Rollovers to a defined benefit plan are treated similarly to employee contributions for purposes of 415(b) testing:

If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by

the Secretary, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A).

Code Section 415(b)(2)(B). The Final Regulations treat rollovers in a manner similar to after-tax contributions, so that the benefit attributable to the rollover must be converted in accordance with prescribed 411 factors. This is true only to the extent the plan provides for a benefit based upon the rollover contributions. That is, if the benefit attributable to the rollover contributions is based upon a separate account, in which the rollover contributions are credited with actual earnings and losses, then the separate account is treated as a defined contribution plan. Treas. Reg. § 1.415(b)-1(b)(2)(v).

7. Amounts Attributable to Transfers between Qualified Plans

Under the Final Regulations, the treatment of transferred benefits for purposes of the 415(b) limits depends upon the types of plans involved and whether there is any relationship between them. Where the transfer is from one defined benefit plan to another defined benefit plan, the receiving plan must include the transferred benefits for purposes of applying the 415(b) limitations. Treas. Reg. § 1.415(b)-1(b)(3)(i)(C).

Where the transfer occurs between two plans which must be aggregated, the transferred benefits must be included by the receiving plan for 415(b) testing purposes. Where the transfer occurs between two plans which are not aggregated, the transferor plan is required to include the transferred benefits by treating the benefits as if provided as an annuity from a separate plan which must be aggregated with the transferor plan. Treas. Reg. § 1.415(b)-1(b)(3)(i)(A), (B).

8. Plan-to-Plan Transfers from a 457(b) or 403(b) Plan

Amounts accepted in a plan to plan transfer from a 457(b) or 403(b) plan should be treated in the same manner as a rollover, as discussed above.

9. Restoration of Contributions

Code Section 415(k)(3) provides that any repayment of contributions (including interest) will not be taken into account for Code Section 415 purposes if the repayment is to a governmental plan with respect to an amount previously refunded on a forfeiture of service credit under that plan or any other governmental plan maintained by the state or any local governmental employer within the same state. Thus, so long as the amount repaid does not exceed the amount refunded, plus interest, Code Section 415 should not apply. However, the Final Regulations do provide that the restored benefit is to be treated for testing purposes as the original benefit would have been treated.

D. AGE-BASED ADJUSTMENT TO LIMITS

1. Benefits Before Age 62

When the benefit begins before the participant reaches age 62, the Dollar Limit benefit limit generally must be actuarially adjusted so that the limit (as reduced) equals an annual benefit that is payable when the retirement benefit begins, and which is the equivalent of the Dollar

Limit beginning at age 62. Code Section 415(b)(2)(C). The actuarial adjustments must be made in accordance with Code Section 415(b)(2)(E). Treas. Reg. § 1.415(b)-1(d). Pre-EGTRRA, Code Section 415(b)(2)(F) limited the actuarial reduction for governmental plans to a \$75,000 benefit payable at age 55 or, if the benefit began before age 55, the actuarial equivalent of a \$75,000 benefit beginning at age 55.

a. Exception for Public Safety and Military

However, no age-based actuarial reduction is required for benefits beginning prior to age 62 for qualified participants. A qualified participant is defined as a participant:

(i) in a defined benefit plan which is maintained by a State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision of a state or Indian tribal government,

(ii) with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant –

(I) as a full-time employee of any police department or fire department which is organized and operated by the State, Indian tribal government, or political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government, or political subdivision, or

(II) as a member of the Armed Forces of the United States.

Treas. Reg. § 1.415(b)-1(d)(3). Historically, there has been some concern over the interpretation of the statutory provision. For example, it was not entirely clear whether the qualified participant had to be a sworn officer of a police department or whether any employee of a police department would be covered by this provision. However, the Final Regulations offer some clarification, making it clear that the application of the rule depends on whether the employer is a police department or fire department of the state or political subdivision, rather than on the job classification of the individual participant.

This exception is very beneficial to public safety officers and to other employees of police and fire departments, including non-public safety personnel. However, this definition does not cover all public safety employees. The examples in the Final Regulations make it clear that an employee of a police division of an agency may be a qualified participant, but that an ambulance driver who works for an emergency medical services agency rather than a police or fire department cannot. While the name of the agency is not important, it is necessary that the employer (or at least the appropriate division of the employer) function as a police or fire department. Also, it is helpful to note that the examples in the Final Regulations do make it clear that the 15 years can be satisfied with a combination of police/fire service and military service.

b. Exception for Disability and Death Benefits

In addition, the actuarial reduction for benefits beginning before age 62 does not apply to disability benefits or survivor benefits payable in the event of the disability or death of the member provided under a governmental plan. Code Section 415(b)(2)(I). The benefit must be paid "on account of the participant's becoming disabled by reason of personal injuries or sickness, or as a result of the death of the participant." Treas. Reg. § 1.415(b)-1(d)(4). This provision will mitigate the IRS position that post-retirement disability benefits must be tested under 415(b).

c. Exception for Permissive Service Credit Procedures

A purchase of permissive service credit may be tested under Code Section 415(b) without regard to the reduction for early retirement.

2. Benefits After Age 65

For all members, if the retirement benefit under the plan begins after age 65 and is actuarially increased due to the delayed starting date, the Dollar Limit is increased so that it is the actuarial equivalent of an annual benefit beginning at age 65. Code Section 415(b)(2)(D). The actuarial assumptions used to make this conversion are set forth in Code Section 415(b)(2)(E). However, under the Final Regulations, this adjustment in the Dollar Limit is only available where the benefit is also increased post age 65

E. ADDITIONAL SPECIAL RULES

Code Section 415(b) has a number of additional special rules that may impact governmental employers.

1. Small Benefits

Code Section 415(b)(4) provides that defined benefit limits will not be applied to reduce a participant's benefits when total annual distributions are \$10,000 or less. However, this limitation only applies "if the employer has not at any time maintained a defined contribution plan in which the employee has participated." Code Section 415(b)(4)(B); Treas. Reg. § 1.415(b)-1(f). The \$10,000 test is measured against actual distributions – not the actuarial equivalent of a straight life annuity.

2. Less than 10 Years of Participation

When an employee has less than ten years of participation in a defined benefit plan, the basic Code Section 415(b) Dollar Limit (or the minimum \$10,000 exemption from testing) is reduced by 10% for each year less than ten in which the employee participated in the defined benefit plan for other than death and disability benefits (but not below 1/10th of the Dollar Limit). Code Section 415(b)(5) and Treas. Reg. § 1.415(b)-1(g).

F. OPTIONAL FORMS OF BENEFITS – BENEFITS OTHER THAN A STRAIGHT LIFE ANNUITY

Benefits in a form other than a straight life annuity must be actuarially adjusted to a straight life annuity beginning at the same age in accordance with the otherwise applicable rules. For example, annuity benefit forms including a post-retirement death benefit or an annuity providing for a guaranteed number of payments must be adjusted for purposes of applying the Code Section 415(b) limit. See Treas. Reg. § 1.415(b)-1(c).

1. 417(e)(3) Benefits and Non-417(e)(3) Benefits

Code Section 415(b)(2)(E)(i) provides that "for purposes of adjusting any limit under subparagraph (C) [adjustment to dollar limit before age 62] and ... for purposes of adjusting any benefit under subparagraph (B) [adjustment for other forms of benefits], the interest rate assumption shall not be less than the greater of 5% or the rate specified in the plan." With respect to adjusting a different form of benefit (under Code Section 415(b)(2)(B)), different interest rate assumptions are used in the case of a form of benefit subject to Code Section 417(e)(3). Code Section 415(b)(2)(E)(ii). However, prior to the Final Regulations, because a governmental plan is not subject to Code Section 417(e)(3), these different interest rate assumptions were not considered to be applicable to governmental plans. Rev. Rul. 98-1, Q&A-3, concluded that plans that are not subject to Code Section 417(e)(3), such as governmental plans, were not subject to the interest rate requirement under Section 415(b)(2)(E)(ii).

However, with the Final Regulations this position has been changed for governmental plans on and after the effective date. The Explanation of Provisions to the Final Regulations states that because Code Section 415(b)(2)(E) applies based on the form of the benefit rather than the status of the plan, the rules set forth in Treasury Regulations § 1.415(b)-1(b)(c) that dictate the manner of adjusting forms of benefit to which 415(e)(3) does or does not apply must be used regardless of whether Code Section 417(e)(3) otherwise applies to the plan. Thus, a governmental plan must follow these rules, presumably as if 417(e)(3) applied.

Code Section 417(e)(3) generally applies to full and partial lump sum distributions and period certain annuities. In a governmental plan, this may include DROP distributions and level income options which do not qualify as Social Security options. Treasury Regulation § 1.415(b)-1(c)(2) provides that if 417(e)(3) does apply to the form of benefit, then the actuarially equivalent straight life benefit is the greatest of:

- The annual amount of a straight life annuity beginning on the same date as the form of benefit actually being paid and which has the same actuarial present value as the benefit being paid, computed using the interest rate and mortality table (or tabular factor) specified by the plan;
 - The annual amount of a straight life annuity beginning on the same date as the form of benefit actually being paid and which has the same actuarial present value as the benefit being paid, computed using a 5.5% interest rate and the appropriate mortality table from Treasury Regulation § 1.417(e)-1(d)(2) for that starting date;
- or

- The annual amount of a straight life annuity beginning on the same date as the form of benefit actually being paid and which has the same actuarial present value as the benefit being paid, computed using the interest rate specified in Treasury Regulation § 1.417(e)-1(d)(3) and the appropriate mortality table from Treasury Regulation § 1.417(e)-1(d)(2), divided by 1.05.

Code Section 417(e)(3) does not apply to straight-life annuities or qualified joint and survivor annuities. If 417(e)(3) does not apply to the form of benefit, then the actuarially equivalent straight life benefit is the greater of:

- The annual amount of the straight life annuity payable under the plan, if any, starting on the same date as the form of benefit actually being paid; or
- The annual amount of a straight life annuity beginning on the same date as the form of benefit actually being paid and which has the same actuarial present value as the benefit being paid, computed using a 5% interest rate and the appropriate mortality table from Treasury Regulation § 1.417(e)-1(d)(2) for that starting date.

2. QJSA Benefits

No adjustment is required for the actuarial value of a qualified joint and survivor annuity ("QJSA") (a 50%-100% joint and survivor annuity with the spouse as designated beneficiary) that is fully or partially subsidized. See Treas. Reg. § 1.415(b)-1(c)(4).

G. COST-OF-LIVING ADJUSTMENT OF CODE SECTION 415(b) LIMITS

Automatic benefit increases (e.g., cost of living adjustments) to a member's benefits are permitted under Code Section 415(d). However, unless the cost of living adjustment meets the requirements of Treasury Regulation § 1.415(b)-1(c)(5), the value of the future cost of living adjustments must be included in converting the value of the total benefit to a single life annuity. That is, the value of all future cost of living increases must be annuitized over the recipient's life expectancy for 415(b) purposes. This method is more likely to result in violations of the limit than the method provided for COLAs which meet the requirements of Treasury Regulation § 1.415(b)-1(c)(5). That method essentially permits annual testing of the benefit, as increased by the COLA that year, against the 415(b) limit, as increased by 415(d) for that year.

Cost of living adjustments to which no adjustment is required for purposes of 415(b) testing are described as automatic, periodic adjustments applied in the following situations:

- A benefit paid in a form to which 417(e)(3) does not apply (that is, an annuity form of benefit is covered by these new rules);
- A benefit that satisfies 415(b) without regard to the COLA; and

- The plan provides that the benefit payable in any year will not exceed the 415(b) limit applicable at the annuity starting date, as increased annually pursuant to Code Section 415(d).

If the cost of living (or other post-retirement adjustment) is not automatic but rather is ad hoc, then the above is not available and benefits must be retested. Under the Final Regulations, automatic, periodic increases include annual increases according to a "specified percentage or objective index" or automatic increases to "share favorable investment returns on plan assets." Treas. Reg. § 1.415(b)-1(c)(5)(ii).

For purposes of the 415 VCP filing, SDCERS has agreed that for retrospective testing, all fixed COLAs will be considered as part of the annual benefit for 415 testing purposes, included in the conversion to a single life annuity, and tested against the full 415(b) limit in accordance with Cheiron testing protocols. See Exhibit A (revised). Prospectively, SDCERS will test the annual benefit and COLA against the 415(b) limit for that year as permitted by the Final Regulations. See Exhibit B; see SDMC §24.1004 (amendment pending).

H. CONSIDERATION OF AN ALTERNATE PAYEE'S BENEFITS FOR TESTING PURPOSES

Benefits payable to an alternate payee under a qualified domestic relations order are treated as part of the member's benefit for purposes of applying the benefit limits under Code Section 415. IRS Notice 87-21, Q&A-20; see also Announcement 95-99, Q&A-17.

I. TESTING OF THE SURVIVOR PORTION OF A BENEFIT

The rules which apply to a member's benefit also apply to a survivor's benefit. Under Code Section 415(b)(1), the annual benefit may not exceed the applicable dollar limit (\$170,000 for 2005). The Code defines "annual benefit" as "a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions ... are made." Code Section 415(b)(2)(A) (emphasis added). If a benefit under the plan is payable in any form other than this form,

the determinations as to whether the [415(b)] limitation ... has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by adjusting such benefit so that it is the equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

Code Section 415(b)(2)(B).

Thus, the benefit that is subject to testing is a straight life annuity, and any other benefit under a plan which is payable in a form other than a straight life annuity (other than a qualified joint and survivor annuity) must be converted to a straight life annuity in order to pass 415(b) testing. In essence, even if a benefit actually being paid is not a straight life annuity, it still

should have been converted to a straight life annuity and tested under Code Section 415(b). Thus, upon the death of the retiree, there would be no need for a "conversion" of the survivor's benefit or a change to the existing 415(b) limit as applied to the retiree's benefit. Rather, upon the death of a retiree, the survivor's benefit continues to be tested against the retiree's benefit limit. (This would also be true of a qualified joint and survivor annuity, even though it is not converted to a straight life annuity for testing purposes, because such benefit is exempted from the conversion requirement.)

J. AGGREGATION OF TOTAL SDCERS BENEFITS FOR TESTING PURPOSES

Under a multiple employer plan, two (2) or more employers that are not part of a related group participate in the same plan. In applying the Code Section 415 limits to such multiple employer plans, Treas. Reg. § 1.415(a)-1(e) provides that for a participant in a multiple employer plan, benefits or contributions under the plan attributable to such participant from all of the employers maintaining the plan and compensation from all the participating employers must be taken into account. Generally, if the employers had maintained separate plans this rule would not apply, and the Code Section 415 limits would be separately determined for each employer because they are not part of a related group.

IV. APPLICATION OF CODE SECTION 415(b) TO SDCERS AND RECOMMENDATIONS

The purpose of this Section of this Compliance Strategy Report is to relate the requirements of Code Section 415(b) as outlined in the previous Section to SDCERS.

A. PLAN DOCUMENT PROVISIONS

SDMC § 24.1004(h) (*per pending amendment*) provides that employee contributions to, and benefits from, SDCERS must comply with the Code Section 415 limitations on contributions and benefits. The provision further confirms the fiscal year as the testing year retrospectively, and the calendar year as the limitation year beginning on January 1, 2008. SDMC § 24.1004(h) permits SDCERS to modify contributions as necessary to ensure compliance with Code Section 415.

B. OPERATIONAL COMPLIANCE

1. Definition of the Annual Benefit for 415(b) Testing

Under Code Section 415(b), the benefit that is subject to testing is the benefit payable annually in the form of a straight life annuity ("SLA") with no ancillary benefits to which employees do not contribute and no rollover contributions are made. Code Section 415(b)(2)(A).

a. Straight Life Annuity

The benefit that will be tested is the SLA plus the value of the DROP benefit (if applicable) on a straight life basis.

For purposes of calculating the SLA, the value of any subsidy provided as part of a qualified joint and survivor annuity was included only when the beneficiary was other than a qualified spouse. We understand that using the SDCERS "maximum benefit" would generally accomplish this purpose.

b. Post-Retirement Increases

SDCERS members receive two post-retirement adjustments: a fixed COLA and a 13th Check. Certain groups receive additional adjustments: a Supplemental COLA and benefit increases under the Corbett settlement. The protocols in Exhibit A treat the fixed COLA as part of the annual benefit for retrospective testing purposes. The protocols in Exhibit B allow benefits to increase as 415(b) limits increase. With respect to the Supplemental COLA, 13th Check and Corbett Settlement, these benefits will also be treated as part of the annual benefit for both prospective and retrospective testing. However, the value of the post-retirement \$2000 death benefit is not included for 415(b) testing. Treas. Reg. § 1.415-3(a)(2)(i)(B).

▪ Fixed COLA

As indicated in Exhibit A, retrospectively, the 415(b) limit is adjusted for age and the Fixed COLA in order to identify the initial group which requires further testing. From there, the Fixed COLA will be included with the benefit for purposes of testing those who fail the initial screen. Prospectively, SDCERS will test the benefit and Fixed COLA annually against the 415(b) limit as adjusted by Code Section 415(d), in accordance with the Final Regulations.

▪ 13th Check

In our various meetings, the question has arisen how to treat the 13th Check for testing purposes because under the Municipal Code, the 13th Check is treated as a contingent benefit. In order to respond to the question, we considered the history of the 13th Check. From 1/1/95 to now, in all but two years the 13th check was paid in full. In 2003 no 13th Check was paid and in another year over 99% of the 13th Check was paid. Based upon this history, it was decided that for 415(b) testing purposes, the 13th Check will be treated as an additional annual benefit. (Note: This is consistent with the treatment described in the Rollover Compliance Report and VCP Filing.)

▪ Supplemental COLA

For 415(b) testing purposes, the supplemental COLA is already treated as part of the annual benefit. This benefit is referred to in the testing chart as the "Star COLA."

▪ Corbett Settlement Amounts

For purposes of 415(b) testing, the Corbett settlement amount will be treated as part of the annual benefit.

The Corbett-covered group is a closed group.

▪ **Andrecht Settlement Amounts**

The Andrecht Settlement amounts were included in the calculation of the annual benefit provided by SDCERS. Therefore, no additional adjustment is required for this settlement (in contrast to the Corbett Settlement, which is a post-retirement adjustment).

c. Factors used in Calculating Actuarial Equivalents

Where necessary to calculate actuarial equivalents, the applicable mortality assumptions of GAM 83 through December 31, 2002, and thereafter GAR 94, pursuant to Rev. Rul. 2001-62, 2001-2 C.B. 632, were used. An eight percent (8%) interest assumption was used pursuant to SDMC § 24.0902 and Proposed Board Rule 8.41. However, a 5% interest rate was applied to post-retirement adjustments to the maximum dollar limit where benefits begin after the member reaches age 65.

Upon implementation of the Final Regulations, the mortality and interest assumptions for 417(e)(3) and non-417(e)(3) benefits set forth above in III.F.1. will be used.

d. Exclusion of Recipients of Ancillary Benefits

It has been determined that individuals who are receiving benefit payments that are not retirement benefits will be excluded from testing. Therefore, SDCERS will not test pre-retirement disability benefits (to the extent not in excess of the qualified disability benefit) or pre-retirement death benefits.

For the pre-retirement disability benefits, SDCERS will still have to apply the 100% of compensation screen. In addition, for the combined pre-retirement disability benefit and the pre-retirement death benefit, SDCERS will apply an incidental benefit test, the 25% of cost test. This will be in addition to, and separate from, the 415 limits.

2. TAMRA Election

SDMC § 24.1010(b) (*prior to pending amendment*) purports to make the TAMRA election for SDCERS benefits. However, the pending amendment to SDMC § 24.1004 would remove the language referencing the TAMRA election, as it is not clear that the requirements of the election were satisfied.

3. Age Adjustments Made in 415(b) Testing

a. Benefits After Age 65

For all members whose retirement benefit begins after age 65, the Dollar Limit was appropriately adjusted, as described in Exhibit A with respect to retrospective testing and Exhibit B with respect to prospective testing.

b. Benefits Before Age 62 – Other than Qualified Participants

For all members other than Qualified Participants whose retirement benefit begins before age 62, the Dollar Limit was appropriately adjusted, as described in Exhibit A with respect to retrospective testing and Exhibit B with respect to prospective testing.

c. Definition of Qualified Participants

As discussed above, the reduction in the dollar limitation for benefits which begin before age 62 does not apply to Qualified Participants. It is important to keep in mind that the group of public safety employees who may take advantage of this exception is not necessarily consistent with SDCERS' public safety member classification. For example, since EMTs were moved into the fire department several years ago, they could be included as a Qualified Participant (if they meet the service requirements). However, lifeguards were moved into the fire department fewer than 15 years ago; therefore, they do not clearly fall within the exception.

We note that the Final Regulations provide further guidance as to the public safety employees who may take advantage of the exception. Following is a suggested checklist for identifying Qualified Participants:

- Is the member credited in SDCERS with at least 15 years of service as an employee of any police department or fire department of the employer? If no, then apply pre-age 62 screen. If yes, proceed to next question. Note: The 15 years must be with an SDCERS employer, not via reciprocity.¹
- Was the member a full-time employee of any police department or the fire department for all of those 15 years of service? If no, then apply pre-age 62 screen. If yes, do not apply pre-age 62 reduction. Count a person as a full-time employee of the department even if they are not a public safety officer. For example, if a person was a secretary in the fire department, they are a Qualified Participant. Service with the departments should be counted, including all periods of service, e.g., count such service that occurred before termination and reemployment. For example, if a member worked on probation for his first six months and then purchased that time, it should be included. A second example is a person who worked for one of the departments for three years, then left and took a refund. He then returned to the department and purchased those three years. They should be included.

SDCERS staff has asked whether this exception for public safety officers requires that all fifteen (15) years of service be with the same department, or whether the service might be spread among two or more departments. In addition, SDCERS staff has asked whether police and military service can be combined to meet the 15-year requirement. The language of the Code is ambiguous on this point. However, an example in the Final Regulations makes it clear that a combination of police department and military service can be used to satisfy the 15 year

¹ If the City plan, the Airport plan, and the Port plan are considered as separate plans, the Proposed Regulations may not permit combining service.

requirement. Given this, we think it is reasonable to take the position that any combination of police department and/or fire department service (that otherwise qualifies) may also be used to meet the 15 year requirement. We therefore are comfortable with the testing being done using the combination of all San Diego police and fire department service and military service.

Park Rangers, who are not in the police department, but who exercise police powers in the City parks will not be treated as qualified participants, as agreed during the VCP process.

d. Exclusion of Pre-Age 62 Reduction for Disability or Death Benefits

The pre-age 62 reduction would not be applied to a SDCERS disability benefit or to a death benefit.

4. 10-Year Adjustment

SDCERS must identify those retirees who have fewer than ten (10) years of service with SDCERS, exclusive of reciprocity and exclusive of service purchases. Those retirees would have a reduced 415(b) test amount – for example, if the retiree only had five (5) years of service with SDCERS (exclusive of reciprocity and service purchases), the retiree's age-adjusted limit would be 50% of the age-adjusted limit. The limit can never be lower than 10% of the otherwise applicable limit. We realize this could create failures because of several design elements (*i.e.*, the Port and Airport Plans have a five year vesting schedule, reciprocity provisions that allow for crediting service in other plans, a pre-1992 group who had less than 10 years of service but were vested as a mandatory retirement age group, and the SPSP "5+5" group). These adjustments are described in Exhibit A with respect to retrospective testing and Exhibit B with respect to prospective testing.

C. AMOUNTS EXCLUDED FROM TESTING

Following is a discussion of the elements that have been considered for exclusion in the screening and testing process.

1. After-Tax Employee Contributions

For 415(b) testing purposes, the portion of the annual benefit that is attributable to after-tax employee contributions may be "subtracted" from the annual benefit. In order to perform this calculation, SDCERS would have to be able to identify mandatory employee contributions that were made prior to the adoption of the pick-up and any voluntary post-tax contributions (including after-tax contributions for service purchases). However, based upon the changes made by the PPA with regard to service purchases and the difficulty in performing 415(c) testing, we ultimately recommend that in the testing protocol the benefit attributable to after-tax employee contributions not be excluded from 415(b) testing, which would be consistent with Code Section 415(n) testing.

a. Mandatory Employee Contributions

SDCERS implemented a pick-up of mandatory contributions in 1987² for all contributions made by the employer. Prior to that time mandatory employee contributions were made on an after-tax basis; therefore, under the IRS regulations the benefit attributable to those mandatory contributions would be excludible from 415(b) testing. However, if those mandatory contributions exceed the 415(c) limits, the benefit attributable to the excess contribution would not be excludible. These pre-87 contributions will only be "backed out" from the 415(b) testing in cases where a failure has been identified in the testing group under the prospective methodology. The initial screen will leave them in.

b. Voluntary USERRA Contributions

It is our understanding that USERRA contributions are subtracted from any differential pay for the member. However, if the member did not receive differential pay, the member would be given the opportunity to pay those contributions on an after-tax basis. Therefore, SDCERS would be permitted to exclude the benefit attributable to the post-tax USERRA contributions from 415(b) testing, if the post-tax USERRA contributions would not have exceeded the 415(c) limits in the year of service.

c. DROP Contributions

SDMC § 24.1404(c)(4) provides that DROP contributions are made pursuant to a 414(h) pick-up. Therefore, the benefit attributable to these contributions would be included in 415(b) testing.

d. Voluntary Contributions for Permissive Service Credit Purchases; Missed Contributions

As noted above, the amount contributed for permissive service credit may either be tested under a modified 415(c) or 415(b) test. SDCERS will use the modified 415(b) test.

When SDCERS has determined that contributions have not been remitted for a period of service, the member is "billed" for these contributions as a pre-condition for receiving credit for that period of service. If those missed contributions are paid by the member with after-tax dollars, those contributions would be tested under Code Section 415(n) using the modified 415(b) test.

As a result of the PPA, all SDCERS service purchases would be considered to be permissive service credit purchases. As a result, those service purchases will be tested under the modified 415(b) testing of Code Section 415(n).

e. Proposed Correction Approach

The proposed correction approach for retrospective testing does follow 415(b) testing with respect to after-tax contributions made for permissive service purchases under Code Section

² This date was provided by staff on 12/7/2005.

415(n). See Exhibit A. The expanded testing of the pre-1995 Group will consider mandatory after-tax employee contributions (pre-pick-up).

Starting with January 1, 2007, and on a prospective basis, 415(n) testing will be applied for all permissive service purchases.

We also recommend, as a going-forward matter, that SDCERS keep a record of the type of service purchased and the source of the purchase. This will be done by reprogramming PensionGold (the SDCERS operating system).

PensionGold currently has fields with drop down selections that are used to identify the sources of money received for the payment of Purchase Service Contracts:

Payment Type Choices:

401k Transfer
Balance Adjustment
Cashless Transfer³
Lump Sum Payment
Manual
Rollover
SPSP Transfer
Transmittal

If the Rollover option is selected as the Payment Type, the "Rollover information" section is enabled. This section has a "Type" field with the following selection options:

401(k)
403(b)
457
Individual Retirement Account
Other Qualified Plan

Other fields in the Rollover information section include:

Acct. Name
Acct. Number
Acct. Holder

Each Payment received is identified in the system as "Pre or Post tax," as well as tied directly to a specific contract which identifies the service purchase type.

To provide for accurate prospective 415(n) testing, we recommend that an additional payment type be identified as 457(b) or 403(b) direct transfer to identify those situation where permissive service credit is being purchased. We also recommend that the specific type of

³ This type of transfer is addressed in a separate VCP filing and Report.

service being purchased be identified so that it can be determined that an appropriate source of funding was used.

2. Rollovers

The amount of the annual benefit that is attributable to rollovers may be excluded from 415(b) testing. As noted above, the benefit attributable to a rollover must be calculated in a manner permitted by the IRS. The properly calculated benefit attributable to the rollover could be "subtracted" from the annual benefit for testing purposes. Appropriate conversion factors for rollover purchases will be utilized.

3. Transfers from a Qualified Plan

With regard to transfers from a qualified defined contribution plan, the amount attributable to the transfer would be excludible from 415(b) testing using IRS prescribed factors. However, if there is a transfer from another defined benefit plan where aggregation is required (because, for example, the plans are maintained by the same employer or related employers), then the total benefit would be tested under 415(b). If the transfer is not from a defined benefit plan where aggregation is required, then the benefit attributable to the transferred amount is treated as if provided as an annuity from a separate plan which must be aggregated with the transferor plan.

4. Transfers from a 403(b) or 457(b) Plan

Amounts received in a transfer from a 457(b) or 403(b) plan are treated in the same manner as a rollover, as discussed above.

5. Purchase of Service Chart

The following chart identifies the various purchases that may be made under the Municipal Code⁴ and our assessment of whether they would appropriately be categorized as permissive service credit – qualified or non-qualified – and the types of contributions that could be used for the purchase. For the category "permissive service," we are assuming that SDCERS assures that there is no double-counting of service and only one year of credit may be received for any 12 month period. For the category "sources" we are referring to whether all types of employee contributions can be made for the purchase – after-tax contributions under 415(n), rollovers, plan-to-plan transfers from a DC qualified plan, and plan-to-plan transfers from a 457(b) or 403(b) plan.

SDMC § /Type	Permissive Service	Qualified or Nonqualified	Sources	Treatment for 415(b) Purposes
Missed Contributions	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS

⁴ Board Rules 10.00-10.40 describe Board policy with respect to the purchases that are set forth in the Municipal Code.

SDMC § /Type	Permissive Service	Qualified or Nonqualified	Sources	Treatment for 415(b) Purposes
				factors; use modified 415(b) testing under 415(n).
24.1301 – LTD	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1302 – Probation. Employee contributions only	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1303 – City Service	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1303 – 1981 Plan – waiting period	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1304 – Part-time, hourly pre 1/2/97	Yes (no double counting)	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1305 – Reinstatement – pre 1/2/97	Yes (no double counting) 415(k) Service	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under

SDMC § /Type	Permissive Service	Qualified or Nonqualified	Sources	Treatment for 415(b) Purposes
				415(n).
24.1306 – Repayment of refunds – contributions plus interest	Yes 415(k) Service	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1307(a) – Approved leave (one year) by payment of "employee cost" for leaves that begin before 2/1/97	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1307(b) – Approved leave (more than one year) by payment of employee and employer cost for leaves that begin before 2/1/97.	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1307(c) – After 1/1/97, LTD, FMLA, leaves without pay.	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1308 – Field of Membership	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).
24.1309 – Military Service: USERRA service (Per SDCERS, this only covers USERRA service.)	Yes	Qualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n). Note: Electing

SDMC § /Type	Permissive Service	Qualified or Nonqualified	Sources	Treatment for 415(b) Purposes
				this for convenience could be treated separately from all other service.
24.1312 – 5 year purchase – No period of service identified	Yes	Nonqualified	All	Back out benefit attributable to rollovers, DC and 457(b)/403(b) transfers, based on IRS factors; use modified 415(b) testing under 415(n).

6. 401(h) Amounts

Payments made from the 401(h) account do not count toward the Code Section 415(b) limit. Treas. Reg. § 1.415-3(d)(2)(ii). However, Code Section 415(l) provides that contributions allocated in an "individual medical account" shall be treated as an annual addition to a defined contribution plan, but are only subject to the 415(c) dollar limit (not the compensation limit).

However, it is our understanding there are currently no SDCERS reserves left to pay this 401(h) benefit. Furthermore, the pending amendments to SDMC § 24.1203 will eliminate the 401(h) account entirely. Consequently, retiree medical is either paid from other sources or not paid at all.

7. Aggregation of Payments to Alternate Payees

For purposes of 415(b) testing, SDCERS must aggregate payments to the member with any payments to alternate payees under the community property laws, including payments made pursuant to child support and spousal support orders. PensionGold was modified as of January 1, 2003, so that all payments made with respect to a member are "associated" with the member. In addition to payments to alternate payees, the "association" also includes deductions from the member's benefit such as an IRS levy. In order to have accurate 415(b) testing both prospectively and retrospectively, all "disassociated" payments must be associated with the appropriate SDCERS member. That "association" was done only with respect to the "initial failure" group. (Please note that the initial group screen did include a 20% load for other than member payments.) Therefore, the total population has not been "associated." The initial failures were "associated." Prospectively, SDCERS must "associate" all members when tested.

D. CLASSIFICATION OF EMPLOYER CONTRIBUTIONS

SDCERS staff has indicated that the SDCERS system does not track employer contributions as to what portion represents an offset contribution and what portion represents a pick-up (as Code Section 414(h)(2) defines the term) contribution. The result is that the benefit attributable to any employer contribution (regular, offset, and pick-up) will be subject to 415(b) testing. This is the appropriate result under Code Section 415(b).

In order to enhance future compliance efforts, we strongly recommend that SDCERS and the plan sponsors use the term pick-up in the manner provided for in Code Section 414(h)(2).

E. QUALIFIED EXCESS BENEFIT ARRANGEMENT ("QEBA")

Ordinance No. O-18390, adopted on March 19, 2001, authorizes the establishment of a qualified governmental excess benefit arrangement (known as the Preservation of Benefit Plan) by SDCERS to pay benefits in excess of the Code Section 415 limitations. SDMC §§ 24.1601 to 24.1608 provide basic provisions regarding the establishment of a QEBA. SDCERS has established the QEBA through a separate plan/trust document containing detailed provisions regarding the plan. (Separate documents have been drafted for each plan sponsor.) This is covered in a separate report, and has been submitted to the IRS in a PLR request.

F. CONCLUSIONS REGARDING RETROSPECTIVE 415(b) TESTING

1. Definition of Tested Group – Post-1994 Group

In its original VCP, SDCERS, working with Ice Miller and Cheiron, developed a protocol for determining whether there have been 415(b) violations in prior years with respect to the group that retired on and after 1/1/95. This protocol began by identifying the entire population of 6652 retirees. That total was initially reduced by disabilitants who were not receiving a service retirement. After removal of records reflecting deceased or suspended participants, this remaining group consisted was then tested under 415(b). See Exhibit A for the assumptions that were used in testing this group. This date (1/1/95) was selected for the following reasons:

From a Benefit Standpoint

1. The DROP benefit is one of the potential "causes" of 415(b) failures. The DROP benefit was initiated after January 1, 1995 (April 1997). Therefore, all DROP recipients are being tested under the new protocol.
2. Using the 1/1/95 date captures all of the Corbett and Andrecht settlement amounts.
3. Service purchases are another potential cause of 415(b) failures. The largest service purchase programs were initiated after January 1, 1995.
4. Multiplier increases are another potential cause of 415(b) failures. The most recent multiplier increases took effect in 1997 and 2002.

From the Code Standpoint

1. The grandfather provision enacted with Code Section 415(m) applies to benefits prior to January 1, 1995.
2. The grandfather provision enacted with Code Section 415(n) applies to any service purchase in effect on August 5, 1997.

2. Additional Testing Group – Pre-1995 Group

As a result of discussions during the VCP process, Cheiron has now developed a testing protocol for those SDCERS members who retired pre-1995. This is now reflected in Exhibit A.

3. Payments of Excess Benefits from the Preservation of Benefit Plan

After completion of the testing described in Exhibit A or B, the excess benefits of the affected individuals will be paid by the plan sponsors pursuant to San Diego Municipal Ordinance O-18930, March 19, 2001 (the "Ordinance"), which establishes the Preservation of Benefit Plan ("POB Plan") as a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m).

SDCERS is pursuing a private letter ruling in order for the IRS to approve the POB Plan as a qualified excess benefit arrangement under Code Section 415(m) and to approve a rabbi trust for the POB Plan under Rev. Proc. 92-64, 1992-33 I.R.B. 11. In the interim, SDCERS has determined that it will seek direct payment from the plan sponsors of the excess benefits.

Once the POB is in place, SDCERS staff will use a "modified cliff approach." Under this approach, a retiree would be paid his/her full monthly benefit from the qualified SDCERS plan until the "modified cliff" date is identified. The modified cliff is determined by first identifying the amount of 415(b) excess for the year and determining how many months of benefits would have to be paid from the POB. Then, that amount is further adjusted to make sure that the member is receiving a portion of his/her benefit from the qualified plan in order that deductions from that benefit can continue.

A very simplified example demonstrates this approach: assume that a retiree is receiving a straight life annuity and has an excess benefit that equals 1/12 of his annual benefit. That would mean that he would receive 11 months of benefit from the qualified plan and one month of benefits from the POB. But if the retiree has a deduction from his benefit that equals 1/2 of his monthly benefit, then he would receive 1/2 of his monthly benefit from the qualified plan in month 11 and month 12 (in order to have dollars available for the deductions to take effect) and he would receive 1/2 of this monthly benefit from the POB in month 11 and month 12.

G. CONCLUSIONS REGARDING PROSPECTIVE TESTING

1. Definition of Tested Group

All members who retire on and after January 1, 2008, will be tested in accordance with the 415(b) protocols being developed by Cheiron, a draft of which is set forth in Exhibit B. To the extent information is available on pre-pick-up employee contributions, the after-tax contributions will be backed out for 415(b) testing.

2. "Screens" Used in Testing

Linea will build screens based upon PensionGold (the software used by SDCERS) fields.

3. Payments of Excess Benefits from POB Plan

Payments of excess benefits that result from prospective screening will be accomplished as stated above.

V.

OVERVIEW OF LAW WITH RESPECT TO DEFINED CONTRIBUTION LIMITS

Annual additions made or deemed to be made to a defined contribution plan are subject to the limits under Code Section 415(c). This test is applied on an annual basis and it is applicable to those governmental defined benefit plans that provide for after-tax employee contributions or certain purchases of service. Thus, after-tax employee contributions and after-tax payments for purchases of service are tested under the Code Section 415(c) limits, in the same manner as contributions to a separate defined contribution plan. Treas. Reg. § 1.415(c)-1(a)(2)(ii).

A. THE DOLLAR LIMIT ON "ANNUAL ADDITIONS"

1. Current Limits

The defined contribution limits contain both a Dollar Limit and a percentage of compensation limit ("Percentage Limit"). EGTRRA increased the Dollar Limit for defined contribution plans from \$35,000 to \$40,000 for plan years beginning in 2002. This \$40,000 dollar limit is subject to more rapid indexing, with annual cost of living adjustments in \$1,000 increments instead of the current \$5,000 increments.

Under prior law, the Percentage Limit did not permit contributions to exceed 25% of compensation. However, EGTRRA amended this limit for plan years beginning in 2002, and permitted annual additions to defined contribution plans of up to 100% of the participant's compensation, or \$40,000 (as adjusted for inflation), whichever is less. For purposes of this definition, "compensation" includes both elective deferrals to a 401(k) plan or 403(b) plan and amounts contributed or deferred by the employer at the employee's election under a cafeteria plan, qualified transportation fringe benefit plan, or a 457 deferred compensation plan.

Certain contributions are not included in the definition of "annual additions" that are tested under Code Section 415(c). Mandatory employee contributions that are picked-up by an employer, or service purchase payments paid for by pre-tax (picked up) installment payments, simplify Code Section 415 testing because mandatory contributions or service purchase installment payments picked up pursuant to Code Section 414(h)(2) are not required to be treated as contributions to a separate defined contribution plan. However, the resulting benefit must be tested under Code Section 415(b) upon separation.

Treasury Regulation § 1.415(c)-1(b)(3) provides that rollover contributions are not treated as employee contributions and thus are not "annual additions." Additional exceptions from the 415(c) limits include USERRA contributions and restoration of forfeited benefits, which are discussed below.

2. The Limitation Year

The limitation year for 415(c) testing purposes will be determined (see pages 2-3) in the same fashion as for 415(b) testing purposes.

The Final Regulations for Code Section 415(c) state the following with respect to the impact of a change in the 415(c) limits in the case of a plan that has a Limitation Year that is not the calendar year:

The adjusted dollar limitation applicable to defined contribution plans is effective as of January 1 of each calendar year and applies with respect to limitation years ending with or within that calendar year. Annual additions for a limitation year cannot exceed the currently applicable dollar limitation (as in effect before the January 1 adjustment) prior to January 1. However, after a January 1 adjustment is made, annual additions for the entire limitation year are permitted to reflect the dollar limitation as adjusted on January 1.

Treas. Reg. § 1.415(d)-1(b)(2)(iii). Applying this regulation to the SDCERS situation, we would come up with the following scenarios:

- If a member wished to contribute after-tax dollars during the time period July 1, 2006 through December 31, 2006, the member would be limited to a contribution of \$44,000 (assuming that his compensation in that Limitation/Fiscal Year was equal to or greater than \$44,000).
- If a member contributed an amount from \$1 through \$44,000 prior to January 1, 2007, the proposed regulation would permit the member to contribute the difference between the amount contributed prior to January 1 and \$45,000 on and after January 1, 2007, through June 30, 2007. For example, if a member contributed \$44,000 prior to January 1, 2007, on and after January 1, 2007, and through June 30, 2007, the member could contribute \$1,000, under the regulation.

3. Code Section 415(k)(3): Repayment of Cash-Outs

Section 415(k)(3) provides that any repayment of contributions (including interest) will not be taken into account for Code Section 415 purposes if the repayment is to a governmental plan with respect to an amount previously refunded on a forfeiture of service credit under that plan or any other governmental plan maintained by the state or any local governmental employer within the same state.

4. Testing of USERRA Service Purchases

Special Code Section 415 testing rules apply to the payment of contributions covered by the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). Pursuant to Code Section 414(u)(1)(A) and (B), payments made in the applicable USERRA "make-up" period shall not be included in the Code Section 415(c) test for the limitation year in which the payment is made, and shall instead be allocated to the limitation year for which it relates. This rule exists to address a situation in which make up contributions permitted by

USERRA for multiple years, in addition to the regular on-going contributions, were all made at once upon the return of a plan member on USERRA-approved leave. If the Code Section 415(c) limits were applied to the sum of these contributions, then a member might exceed the applicable limit.

In SDCERS' case, generally in "real life," the employee is being paid differential pay while on military leave, so their regular deductions for contributions remain as is (on a pre-tax basis). For the few employees who do not receive sufficient pay throughout the period to remain current on contributions, they are given options on how to restore contributions (e.g., lump sum installments). This group may need to be moved to an Exception Management process.

5. Code Section 414(v)

Code Section 414(v) provides that an "applicable employer plan" may permit an eligible participant to make additional elective deferrals in any plan year subject to certain limits. An "applicable employer plan" includes a 401(a) plan, a 403(b) plan, a SEP or a SIMPLE IRA, and a 457(b) plan. An eligible participant means a participant in the plan who will attain age 50 in the plan year and who would otherwise be "capped" out by other Code limitations. These additional elective deferrals may not exceed the lesser of the "applicable dollar amount" (for 2006 and thereafter this amount is \$5,000) or the difference between the participant's compensation minus all other elective deferrals. For purposes of applying this limit, all 401(a) plans, 403(b) plans, SEPS and Simple IRAs of a single employer must be aggregated. Multiple 457(b) plans of a single employer must be aggregated, but are not aggregated with the other types of employer plans.

An additional elective deferral under Code Section 414(v) will not be subject to the otherwise applicable limitation under Code Section 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b) (determined without regard to 457(b)(3)).

Therefore, in determining whether an SDCERS member who makes an after-tax employee contribution is violating the 415(c) limits, the member's 415(c) limit is determined without regard to any additional elective deferral made under Code Section 414(v).

B. DEFINITION OF COMPENSATION

1. General Rule

Code Section 415(c)(3)(A) defines "participant's compensation" as "the compensation of the participant from the employer for the year." Code Section 415(c)(3)(D) includes as compensation elective deferrals under Code Section 402(g)(3) and amounts contributed by the employer at the election of the employee which are excluded from income under Code Sections 125, 132(f)(4), or 457.

Treas. Reg. § 1.415(c)-2(b) provides the following definition of compensation:

For purposes of applying the limitations of section 415, except as otherwise provided in this section, the term "compensation" means remuneration for services of the following types:

(1) The employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). . . .

* * *

(3) Amounts described in sections 104(a)(3), 105(a), and 105(h), but only to the extent that these amounts are includible in the gross income of the employee.

(4) Amounts paid or reimbursed by the employer for moving expenses incurred by an employee, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the employee under section 217.

* * *

(7) Amounts that are includible in the gross income of an employee under the rules of section 409A or section 457(f)(1)(A) or because the amounts are constructively received by the employee.

Code Section 104(a)(1) excludes from gross income amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

2. Safe Harbor Definitions

There are at least three safe harbor options available to a plan for purposes of defining compensation for Code Section 415(c):

- (1) Define compensation on a person by person basis, including all taxable income and certain items not included on Form W-2, imputed income items, etc. This approach has the advantage of producing the highest possible compensation amount for each individual, but is not administrable for a plan of any size. In order to take this approach, it would be necessary for SDCERS to determine the tax treatment of domestic partner health coverage and various other items.
- (2) Define compensation based on the number reported by the employer as gross income in Box 1 of each employee's Form W-2. This approach results in a lower number than method 1, but is much easier to administer.
- (3) Define compensation based on amounts subject to federal income tax withholding, as well as certain amounts that would be includible except for an election under a cafeteria plan, a qualified transportation fringe benefit, a 401(k) plan, a 403(b) plan, a simplified employee pension, a simple retirement account, or a 457(b) plan. This approach also results in a lower number than method 1, but

is generally easily available from the employer or payroll service provider and is therefore much easier to administer than an individualized approach.

3. Treatment of Workers Compensation

Plans often question how to treat workers compensation payments for purposes of the Code Section 415(c) definition of compensation. Generally, workers compensation payments are excluded from gross income, provided they are paid under a workers compensation statute, and therefore would not be includible as compensation under Code Section 415(c)(3). We believe this is true regardless of whether the employer is funding the payments directly or has paid for worker's compensation insurance, as in either case the amounts paid would (presumably) be paid pursuant to a worker's compensation statute.

There is a special rule under Code Section 415(c)(3)(C) which provides as follows:

(C) SPECIAL RULES FOR PERMANENT AND TOTAL DISABILITY. In the case of a participant in any defined contribution plan—

- (i) who is permanently and totally disabled (as defined in section 22(e)(3)),
- (ii) who is not a highly compensated employee (within the meaning of section 414(q)), and
- (iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term "participant's compensation" means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).

Treasury Regulation § 1.415(b)-1(b)(2)(iv) and Treasury Regulation § 1.415(c)-1(a)(2)(ii)(B) provide that the voluntary and mandatory employee contributions (but not picked up contributions) under a defined benefit plan are treated as a separate defined contribution plan maintained by the employer, subject to the limitations on contributions of Code Section 415(c) and Treasury Regulation § 1.415(c)-1. Thus, while Code Section 415(c)(3)(C) specifies its applicability to defined contribution plans, it could be argued that these provisions would be applicable to that portion of a defined benefit plan that is to be treated as a defined contribution plan.

Treasury Regulation § 1.415(c)-2(g)(4) provides that, if certain conditions are satisfied, then "compensation" for a defined contribution plan participant who is permanently and totally disabled means "the compensation the participant would have received for the year if the

participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled, if such compensation is greater than the participant's compensation determined without regard to this paragraph." For this rule to apply, the following conditions must be satisfied:

- (1) Either the participant is not a highly compensated employee (as defined in section 414(q)) immediately before becoming disabled, or the plan provides for the continuation of contributions on behalf of all participants who are permanently and totally disabled for a fixed or determinable period;
- (2) The plan provides that the rule of this paragraph (g)(4) (treating certain amounts as compensation for a disabled participant) applies with respect to the participant; and
- (3) Contributions made with respect to amounts treated as compensation under this paragraph (g)(4) are nonforfeitable when made.

Treas. Reg. § 1.415(c)-2(g)(4)(ii).

This special rule provides that in the case of an individual with a total and permanent disability, Code Section 415(c) compensation would be deemed to be compensation at the rate the employee was being paid prior to the disability. This then leads to the question of how this provision is applied. Based on the Final Regulations, it appears that Code Section 415(c)(3)(C) is definitional for 415 compensation purposes, thereby creating a base for applying the 415(c) limit.

In SDCERS' case, the City has industrial leave paid under the active payroll, with the possibility the person will go to a different payroll (*i.e.*, workers compensation). This may require that a person in this situation be moved to an exception management process.

C. SERVICE PURCHASES

In our earlier report, we noted that one of our primary areas of concern with regard to 415(c) testing was with respect to service purchases. A voluntary employee after-tax contribution is subject to 415(c) testing unless the more advantageous provisions of Code Section 415(n) apply. However, the PPA has made 415(n) much broader so that the more favorable limits would apply to all SDCERS service purchases, subject to 415(n) limits.

As noted in an earlier section of the report, if an employee makes a voluntary contribution for a service purchase, the voluntary contribution may be tested under more generous 415(c) limits or 415(b) limits. The 415(c) limits under 415(n) are as follows:

For purposes of Code Section 415(n) service purchases, only the dollar limit under Code Section 415(c) applies (\$40,000 (adjusted for inflation)) by treating all permissive service contributions as an annual addition under that limit.

D. ANALYSIS OF ALL CITY PLANS

Code Section 415(g) requires the aggregation of all plans of an employer for 415 testing purposes. Therefore, our other primary area of concern for 415 testing occurs with respect to the other defined contribution plans that are maintained by the City – the 401(k) plan and the SPSP. The City's 457(b) deferred compensation plan is not aggregated with SDCERS.

VI. APPLICATION OF CODE SECTION 415(c) TO SDCERS AND RECOMMENDATIONS

A. PLAN DOCUMENT PROVISIONS

SDMC § 24.1004(h) (*per pending amendment*) provides that employee contributions to, and benefits from, SDCERS must comply with the Code Section 415 limitations on contributions and benefits. The provision further establishes the fiscal year as the testing year, retrospectively, and the calendar year, prospectively. The amendment would permit SDCERS to modify contributions as necessary to ensure compliance with Code Section 415.

B. TESTING OF "ANNUAL ADDITIONS"

1. Plan Aggregation

Prior to 1/1/06, SDCERS has not tested annual additions against the Code Section 415(c) limitations. The City administers three defined contribution-type plans: the 401(k), SPSP, and a 457(b) plan. The City tests elective deferrals to the 401(k) and 457(b) plans. The City does not conduct Code Section 415(c) testing for its 401(a) plans (401(k), SPSP, and SDCERS). The other City plans and SDCERS are subject to qualification failure if the 415(c) testing requirement is not satisfied and individuals are contributing in excess of the limitations to the plans in the aggregate. In order to address this qualification issue, SDCERS would have to coordinate with City to test for both the dollar and compensation limits under Code Section 415(c). In order to perform this test, SDCERS must select a definition of compensation that is permitted under the Code (see next section). The pre-tax (picked-up) contributions to SDCERS would not be used in the 415(c) testing.

If the after-tax contribution was made for a purchase of permissive service credit, Code Section 415(n) would apply and permit a higher level of contribution than under Code Section 415(c) or testing under 415(b).

The Airport and Port only offer a 457(b) plan; they do not provide a 401(k) or 401(a) plan. As a result, 415(c) testing for SDCERS purposes would not require aggregation with the Airport and the Port 457(b) plans.

2. Definition of Compensation

We discussed the three safe harbor definitions of compensation with SDCERS staff. Currently, none of the compensation fields provided by the City in Pension Gold represents any of the safe harbor definitions. SDCERS staff and the City have compared W-2 compensation

used by the City with "gross compensation" reported as Gross Salary in Pension Gold. SDCERS staff has determined that the compensation numbers that are currently provided to SDCERS by the plan sponsors do not comport with any of the three safe harbor definitions. Therefore, for future testing purposes, it was determined that SDCERS would ask the plan sponsors to provide the Medicare wages amount from the W-2 system as a reasonable proxy for the safe harbor that starts with taxable wages and then restores elective deferrals.

Finally, please note that all plans which must be aggregated for purposes of 415(c) testing must use the same definition of compensation for those purposes. Therefore, if the plan sponsors are using a different definition of compensation for purposes of their testing, SDCERS must collaborate with them to arrive at a consistent approach.

C. CONCLUSIONS REGARDING RETROSPECTIVE 415(c) TESTING

Given the 415(b) testing approach described in earlier sections of this Report, SDCERS is proposing not to do retrospective 415(c) testing for service purchases that fit within 415(n). This should be a reasonable approach considering the following factors:

- Since 1987, all mandatory employer contributions have been picked-up and thus would be subject to 415(b) testing.
- Since 1997, all service purchases made with after-tax employer dollars are subject to either modified 415(c) testing or modified 415(b) testing. SDCERS has elected 415(b) testing. The PPA has confirmed the availability of this methodology.
- Service purchases permitted as of August 5, 1997 are grandfathered and thus are not subject to 415(c) testing.
- For retrospective 415(b) testing, SDCERS is not backing out any after-tax employee contributions, except where information is available for mandatory post-tax contributions.
- Service purchases made via rollover and plan-to-plan transfer from the DC plans are not subject to 415(c) testing.
- Service purchases made by plan-to-plan transfers from the 457(b) plan are subject to regular 415(b) testing.

D. CONCLUSIONS REGARDING PROSPECTIVE 415(c) TESTING

Given the practical problems associated with 415(c) testing, SDCERS has determined to take the following prospective approach starting January 1, 2007.

1. Definition of Tested Group

The tested group will consist of all employees making after-tax contributions on and after January 1, 2007.

2. Testing of Service Purchases Made with After-Tax Employee Contributions

All service purchases made with after-tax employee contributions will be tested under the modified 415(b) testing under 415(n) if the service being purchased is permissive service, including qualified and nonqualified service, in accordance with the chart above. This means the benefit attributable to these contributions will not be tested under 415(c).

3. Testing of Other After-Tax Employee Contributions

SDCERS does not anticipate that any after-tax contributions would be received that did not qualify as contributions for the purchase of permissive service credit. Therefore, all would be tested under 2 above. However, SDCERS is retaining an "exception test" procedure for 415(c) in case SDCERS wishes to use the modified 415(c) testing in the future for service purchases or if other conditions arise which would require it (such as a change in the law).

4. USERRA Testing

In the case of USERRA contributions, the 415(c) limits that would be examined would be the limits in place with respect to the covered service – not necessarily the year of the payment.

5. Compensation Definition

The compensation definition that will be used in 415(c) testing (if it is necessary) has been stated in the proposed amendment to SDMC § 24.1004.

6. Testing Protocol

The testing protocol for this is set forth in Exhibit D.

7. Priority

One issue raised in this context is that of "priority." That is, it is important that a clear priority be established among the different plans as to what will be reduced first, second, etc. in the event that annual additions exceed the Code Section 415(c) limitation. This priority list should include not just the different San Diego defined contribution plans, but also the different types of contributions possible to each of those plans.

- First, attempt the correction through the 401(k) program. The amount of excess contributions would be distributed to the member.
- If the amount of 401(k) contributions for the year is not enough for the correction, then the next plan to consider would be SPSP. However, in order to preserve the plan's status as the Social Security replacement plan, the amount of contributions available to be refunded would be limited to the voluntary contributions.
- If the amount in the SPSP available for refund was insufficient to make the correction, then the correction would have to be made from SDCERS. This could affect the member's service purchase.

E. TESTING OF SERVICE PURCHASES – BY SOURCE

1. SDCERS Provisions

SDMC § 24.1310(a) provides that in order to purchase Creditable Service a member must pay an amount, including interest, determined by the Board before the effective date of retirement. This section goes on to provide as follows:

- (b) Subject to any limitations imposed by the Internal Revenue Code, such payments under section 24.1310(a) may be made by lump sum, installment payments, direct transfer to the Retirement System from any defined contribution plan maintained by the City of San Diego, or in such manner and at such time as the Board may by rule prescribe. Any sums paid by a Member under section 24.1310 are considered to be and administered as Member contributions.

SDMC § 24.1310(b). The Board has adopted rules under this section, which the Board has recently amended to read as follows:

Rule 10.50 Methods of Payment.

- (a) Subject to any limitations or conditions imposed by applicable tax laws and regulations, a member may pay for service credit by:

- (1) lump sum,
- (2) installment payments through payroll deduction,
- (3) direct transfer to the Retirement System from any tax qualified defined contribution plan maintained by the City, Airport Authority or Unified Port District,
- (4) rollover or direct transfer of funds from an eligible retirement plan,
- (5) direct in-service transfer from an IRC 457(b) compensation plan or an IRC 403(b) plan, subject to Board Rule 10.60 (subject to prior approval by the IRS); or
- (6) any other source allowable under federal law.

- (b) The System will treat all amounts paid by members under this Division as member contributions.
- (c) A member must complete all payments to purchase service credit before his or her effective date of retirement, entry into DROP, or termination of employment (in the case of a deferred retirement).
- (d) If a member elects to make installment payments:

- (1) the member must agree to an installment contract with a payment plan that includes the purchase cost plus installment interest,
- (2) the payments must be made through payroll deduction,
- (3) the payments must be at least \$20 per pay period,
- (4) the System will charge installment interest to the member's individual account using the actuarial assumed interest rate in effect at the time the installment contract is executed, and
- (5) if making pre-tax payments, the member must complete the installment contract before he or she first becomes eligible to service retire, unless the member acknowledges in writing the negative consequences of failing to do so. (See form SDCERS uses for this. See Exhibit L.)

Board Rule 10.50.

The Board has adopted Rule 10.60 to read as follows:

Rule 10.60 In-Service Transfer of Funds from a 457 Defined Compensation Plan to Purchase Service Credit.

- (a) Purchase of Service Credit under General Five-Year Provision (Board Rule 10.10): A member may purchase service under Board Rule 10.10 (general five-year purchase) by an in-service plan-to-plan transfer from a 457(b) plan. No certification of corresponding service is required.
- (b) Purchase of "Service-Connected" Service Credit. A member may purchase service-connected service credit under Board Rule 10.00 by an in-service plan-to-plan transfer from a 457(b) plan. No certification of corresponding service is required.

With this new Rule 10.60 in place, transfers from the 457 plan will be accepted for service purchases as described in (a) and (b). See PLR 200550042.

The Board Rules also provides for the terms of installment contracts in Board Rule 10.70. Based upon these rules, it is clear that SDCERS has attempted to avail itself of all methods of service purchases.

2. Compliance Testing Chart

The following chart shows how the available sources of voluntary employee contributions for service purchases should be tested under either Code Section 415(c) or 415(n). (Refer to the earlier chart for a categorization of service purchases as permissive service and as qualified and non-qualified service.)

Voluntary Employee Contributions for Service Purchases	415(c) Testing or 415(n) Testing
In-service transfers from DC Plans (401(k), SPSP)	415(c) limits (including 415(n) modified limits) do not apply. Regular 415(b) limits should be applied at distribution.
Lump sum after-tax employee contributions and installment contracts for after-tax contributions if for non-permissive service or for nonqualified permissive service credit in excess of limits	415(c) limits apply (lesser of \$40,000 (adjusted) or 100% compensation in the year of purchase). These will be tested on an exception basis.
Lump sum after-tax employee contributions and installment contracts for after-tax contributions if for permissive service	415(n) limits apply. Therefore, purchase will be tested under modified 415(b) limits. However, SDCERS may prospectively implement modified 415(c) testing procedure.
Picked-up employee contributions for installment contracts Note: A favorable IRS private letter ruling is the mechanism for obtaining approval for a pick-up of employee contributions for a service purchase.	415(c) limits (including 415(n) modified limits) do not apply. Regular 415(b) limits should be applied at distribution.
Lump sum rollovers from eligible plans (401(a), 457(b), 403(b), 401(k), 403(a) and IRAs)	415(c) limits (including 415(n) modified limits) do not apply. Rollovers only after separation from service except IRAs.
Repayment of refunded contributions	Under 415(c)(3), 415(c) limits will not apply. 415(b) limits will apply at distribution.
Lump sum transfers from 457(b)/403(b) plans	Limited to permissive service credit and restoration of service. 415(c) limits will not apply. 415(b) limits will apply. <u>See Rule 10.60.</u>

It is our understanding from SDCERS staff that the vast majority of service purchases are made by plan-to-plan transfer from the Employers' plans. However, all of the other mechanisms are used to some extent, including after-tax payments.

F. TESTING OF USERRA SERVICE PURCHASES

SDMC § 24.1309 addresses purchase of retirement credit for service in the armed forces. The provision specifies that for purchases made pursuant to a leave due to military service, the payment is treated as an annual addition for the limitation year to which it relates. In order to provide appropriate treatment of USERRA service purchases, SDCERS will need to work with Employers to determine USERRA eligibility. The problem of accurate USERRA reporting may be limited to only a few SDCERS members because most SDCERS members who are called to

military service receive differential pay. It is the City's practice to deduct the member's contribution from the differential pay on a picked-up basis. As a result, most SDCERS members retiring from USERRA-covered service to employment do not need to make any contributions for the USERRA leave period.

CIRCULAR 230 DISCLOSURE

Except to the extent that this advice concerns the qualification of any qualified plan, to ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing, or recommending to another party any tax-related matters addressed herein.

INDEX OF EXHIBITS

- Exhibit A: Cheiron Report on Retrospective 415(b) Testing (Revised 8/16/07)
- Exhibit B: Cheiron Report on Prospective 415(b) Testing (Revised 03/07)
- Exhibit C: Linea Solutions 415(b) Operational Process Document
- Exhibit D: Linea Solutions 415(c) Operational Process Documents and Charts
- Exhibit E: Cheiron Determination of Accumulated Payments from SDCERS Over 415 Limits
- Exhibit F: Cheiron General Employee Limits
- Exhibit G: Cheiron Uniform/Safety Employee Limits

NOTE: EXHIBITS C-G WILL BE EDITED AND FINALIZED POST COMPLIANCE AGREEMENT.

Exhibit A: Cheiron Report on Retrospective 415(b) Testing (Revised 8/16/07)

Exhibit A: Cheiron Proposed Procedures on Retrospective 415(b) Testing

San Diego City Employees Retirement System

Retroactive Testing of Internal Revenue Code Section 415(b) Maximum Allowable Defined Benefits Payable from a Qualified Trust

The following is a narrative summary of the procedure performed by Cheiron, Inc, the San Diego City Employees Retirement System's (SDCERS) Actuary in coordination with Ice Miller, LLP and SDCERS staff in performing retroactive testing of Internal Revenue Code (Code) Section 415(b) testing of defined benefits. In performing this testing Cheiron relied on the data provided by SDCERS and interpretations and guidance of Ice Miller LLP.

Procedure to test current retirees

The first step was to identify the testing population. We started with the database provided in performing our actuarial valuation of SDCERS as of July 1, 2006. These are the applied steps in defining the test population:

- SDCERS provided Cheiron with 6,652 retiree records. Each record included social security number, first, middle, and last name, benefit type, effective date, termination date, annuity, pension, cola and base amount.
- We then received the DROP account balances database.
- These records were matched to the data provided for the June 30, 2006 actuarial valuation and reconciled.
- For compliance we looked at all retirees based on the IRS response to the initial filing.
- We excluded all disabled retirees (pre-retirement) who have not attained normal retirement age from the testing population.
- We supplemented this data with any retirees since June 30, 2006 and through June 30, 2007, who were within 70% of the 415 limits at retirement.

With the eligible population subject to testing defined, we proceeded to define the total aggregate benefit payable at retirement from SDCERS. We tested this population in two phases, first by identifying those retirees who were within 85% of the limit and then this net group after receiving more detailed confirmation of benefit data. These steps included:

- Extracted from the database date of birth, total service credits, plan ID (general employee versus public safety), benefit type, standard benefit, cost of living adjustment (CPI with 2% cap, 13th check), benefit granted through subsequent litigation or grants [Corbett and Andrecht] and payment option.
- The DROP accounts information was provided for all retirees through June 30, 2007. For testing we converted the lump sum values of these accounts to annuities as additional benefits at retirement based on the appropriate assumptions for conversion of benefits to a single life annuity.

- The benefit is ultimately adjusted for the automatic COLA for testing; however, we initially adjusted the 415 dollar limit to identify our detailed test group.
- The 13th check while contingent on excess earnings has been fully granted in all but two years and was assumed to be a permanent benefit and subject to testing as if permanent.

With each of the component benefits identified we determined a potential failure group by making some general assumptions to identify potential test failures (participants in pay status receiving in excess of the appropriate 415 limit). With these adjustments a testing population was defined if the benefit was at least 85% of the calculated 415 age and COLA adjusted limit.

Before this test group was resubmitted to SDCERS for verification of each of the data elements, we made additional assumptions where the data was not already available. The objective was to define a larger then needed population to capture any potential values before the case by case review proceeded. We added the following steps:

- While we had optional forms of benefit to convert to standard life annuities or qualified survivor benefits, we did not have information as to whether the beneficiary under the joint and survivor options was a qualified spouse. To be most inclusive we therefore assumed that all survivor benefits were non spouse beneficiaries and increased the base benefit to be 20% of the reported value to simulate the actuarial adjustment that might apply.
- We determined the total annual annuity for each retiree by adding the pension adjusted for form of payment, the 13th check benefits and the additional 7% Corbett benefit for pre 2000 retirees together (the Andrecht benefits were included in the pensions provided by SDCERS as their payment of this benefit was not contingent on excess earnings).
- We tested all participants against the 415 limitation in effect at time of retirement, based on appropriate limits adjusted for age at benefit commencement, employment classification (general versus public safety), year of retirement, defined normal retirement age and 2% automatic COLA (by using 80% of the limit as a maximum estimated adjustment).
- By taking a ratio of the sum of the benefit pieces to the appropriate 415 limit we identified all participants with a ratio of 85% or greater.

From this process we defined the group of potential failure of 342 participants in pay status to be submitted to SDCERS to go through each file and confirm the data used as well as identify additional information to use in the testing. This cohort is made up of 26 participants who retired prior to 1995, and 291 who retired between 1995 and March 31, 2006. We also added in any retirees from March 31, 2006 through June 30, 2007 who were tested and subjected to the lower threshold of 75%.

Along with confirmation of the data used for this initial testing, we requested information that affected the final test including whether the benefits reflect

- Offset for benefits purchased from qualified rollovers amounts
- Eligibility for public safety limitations by virtue of having 15 or more years of service as a public safety employee
- Aggregation of benefits from a qualified domestic relations order in effect at the

- time of retirement
- Continuation for those participants with joint and survivor options in effect as to whether the beneficiary is a qualified spouse
- Post tax contributions or employee benefits
- Pre or post tax rollovers used for the purchase of additional service benefits.

Making adjustments for the additional information as appropriate we ran a final test on the 342 participants and determine the number of participants in receipt of benefit in excess of the appropriate 415 limit.

The retroactive testing population was defined as 102 retired participants for whom we prepared a year by year comparison of the benefits payable including actual cost-of-living adjustments to the 415 limit adjust to age of retirement and benefit form. This process was conducted for each of the retroactive testing retirees with one or more years of benefit receipt in excess of the appropriate 415 limit from actual retirement date through June 30, 2007.

The net excess benefits were rolled forward at 8.0% from the end of the limitation year to June 30, 2007.

Procedure and assumptions applied in the determination of the appropriate 415 limits:

1. Applicable mortality and interest rate assumptions for the calculation of actuarial equivalents are: a gender blended 50/50 GAM 83 mortality table used through December 2002 and 94 GAR mortality table projected to 2002 using the AA projection scale, thereafter with an 8% interest assumption in accordance with Code Section 415(b)(2)(E)(i).
2. DROP balances are annuitized at the date of actual retirement using the above assumptions.
3. 415 limits by age for general retirees are based on the changes in the law under EGTRRA to reflect pre-65/62 reductions.
4. We used the 415 limit as defined in the limitation year by taking 6/12ths of the limit during the two calendar years that fall within the limitation year.
5. The total annuity of each general retiree is compared to the 415 limit based on age at retirement and year of retirement.
6. For retirees qualified as public safety, a comparison was made to the 415 limit based on years of retirement. There is no age adjustment made for public safety retirees under age 65.

Procedure to fill in missing information:

1. For retirees who have died, the value of their initial benefit is used and limitation applied in proportion to the a beneficiary's annuity.
2. While we have optional forms of benefit to convert to standard life annuities or qualified survivor benefits, where information as to whether the beneficiaries under the joint and survivor options is not a qualified spouse we adjusted the benefit based on a factor determined by taking the ratio of the J&S annuity over the straight life annuity.

Exhibit B: Cheiron Procedures on Prospective 415(b) Testing

San Diego City Employees Retirement System

Prospective 415(b) Testing

Prospective testing will be conducted first by SDCERS through a screening process that will combine detailed information provided through Pension Gold and a calculator developed to incorporate the various benefits to be included as defined benefits. Cheiron will be involved in verification of those benefits considered within a reasonable range of the maximum limitations to verify any adjustments to be made.

The calculator -- a sample screen in Exhibit G -- incorporates the current benefits provided to City employees as non-ancillary. The process will be similar to the retrospective approach and will differ through the potential inclusion of more accurate information on the nature of funds used in the purchase of service, and rollover amounts. It is also anticipated that at some point in time post-tax employee contribution information may be available for offset in the determination of the benefit subject to testing.

It is anticipated the calculator will also be adjusted from time to time to reflect changes in the testing procedure as a function of changes in defined limitation year, assumptions defined by the plan and changes in the application of automatic cost-of-living adjustments.

Exhibit B: Cheiron Procedures on Prospective 415(b) Testing

San Diego City Employees Retirement System

Prospective 415(b) Testing

Prospective testing will be conducted first by SDCERS through a screening process that will combine detailed information provided through Pension Gold and a calculator developed to incorporate the various benefits to be included as defined benefits. Cheiron will be involved in verification of those benefits considered within a reasonable range of the maximum limitations to verify any adjustments to be made.

The calculator -- a sample screen in Exhibit G -- incorporates the current benefits provided to City employees as non-ancillary. The process will be similar to the retrospective approach and will differ through the potential inclusion of more accurate information on the nature of funds used in the purchase of service, and rollover amounts. It is also anticipated that at some point in time post-tax employee contribution information may be available for offset in the determination of the benefit subject to testing.

It is anticipated the calculator will also be adjusted from time to time to reflect changes in the testing procedure as a function of changes in defined limitation year, assumptions defined by the plan and changes in the application of automatic cost-of-living adjustments.

I/1928719.2

Exhibit C

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

415(b) Operational Process

1 Overview


This document presents the operational process implemented by SDCERS to:

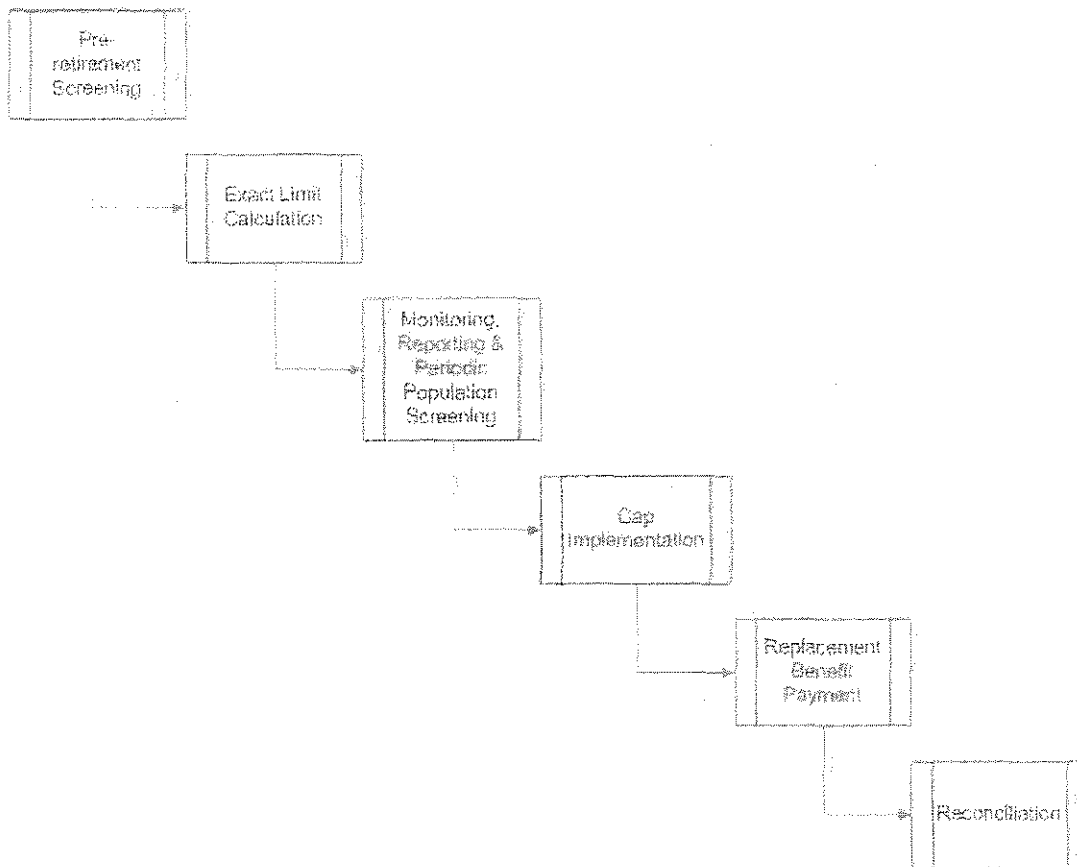
1. Screen benefits for 415(b) compliance
2. Cap benefit payments to those payees whose benefits exceed 415(b) limits

The key stakeholders in this process are:

- **Members and their associated payees**, currently receiving benefit payments and subject to 415(b) limitation
- **Member Services staff members**, responsible for counseling retirees and entering 415(b) data into PensionGold
- **Member Services manager(s)**, responsible for monitoring 415(b) limited payees and coordinating the cap implementation and replacement benefit payments
- **SDCERS' actuarial firm, Cheiron**, responsible for reviewing referred payee data and calculating exact 415(b) payee limits
- **Legal department**, responsible for participating in the Senior Management Review Group
- **SDCERS Board**, in maintaining the tax qualified status of the plan

The highest level process flow is as follows:

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	




2 415(b) Screening and Monitoring Process

2.1 Pre-Retirement Initial Screening and Counseling

It is very important that the Member Services staff members be able to effectively and accurately counsel members who may be subject to 415(b) benefit limitations. The staff members will need to produce an initial “worst case scenario” screening result, by entering key member data into the Cheiron screening tool. Some data elements, such as retirement effective date, may be estimated at this early stage. If pre-retirement testing indicates that the member’s combined benefit may be within 95% of their limit, then he or she is counseled accordingly, and the file is flagged.

During the Member’s counseling session, it must be determined whether or not Safety Members have met the IRS definition of Safety at anytime during their career. If they have, the staff member will set the IRS Safety flag in the member’s PensionGold record.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

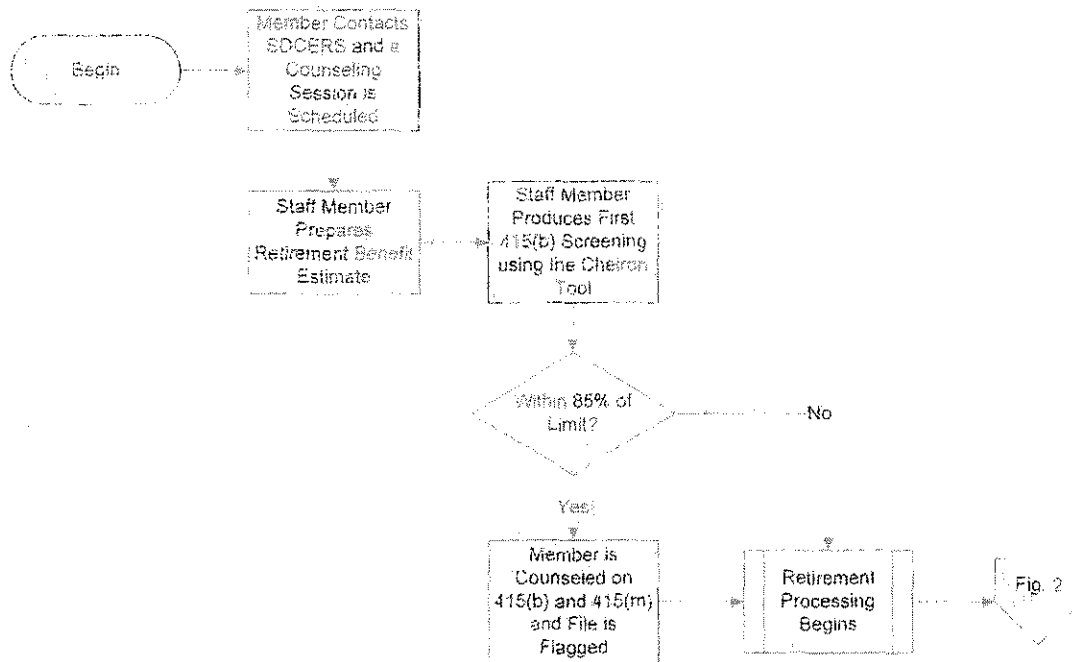



Figure 1

2.2 Establishment of the 415(b) Limit at Retirement

Once an application is made for retirement and the benefit set-up process has begun, the initial 415(b) test is repeated with final retirement information. If still within 95% of the limit used in this first level screening, the member's file will be referred to the 415(b) Review Group. This group, made up of representatives from Legal and Senior Management, will review the member record. They will confirm the staff member's IRS Safety determination and assess the record for possible exemption. If the member is exempt ("grandfathered") from 415(b) limitation, the 415(b) Exempt flag is set in their PensionGold member record and they will be excluded from future screening. If it is determined that no exemption exists, they will approve the referral of the member's data to Cheiron.

Cheiron will use the detailed data from the member's file, to complete the calculations necessary to arrive at the **exact** 415(b) benefit limit to be applied to the member in the current year (the year of retirement). Staff members are responsible for entering this limit, along with its effective date into the PensionGold member record.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

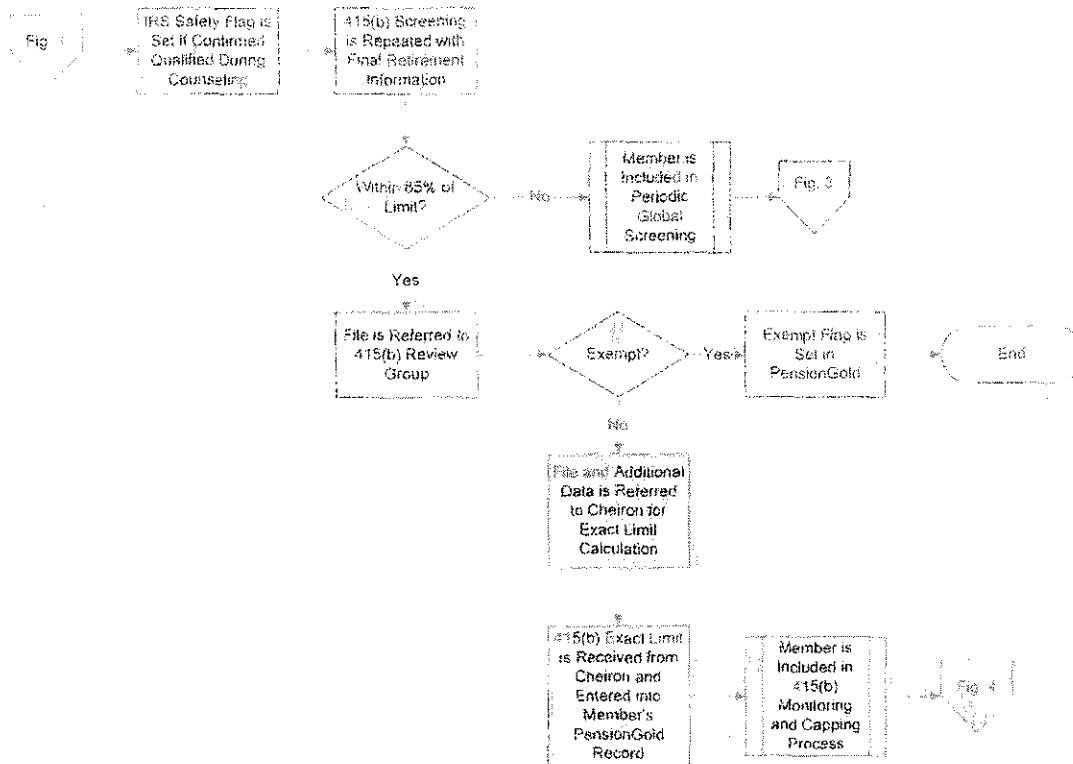



Figure 2

2.3 Periodic Screening of Payee Population

The Senior Management Group will request the periodic screening of the entire population of payees currently receiving a benefit. This worst-case screening will return a listing of anyone within 95% of the limit, but for whom there is no specific limit already populated in PensionGold. By doing this screening periodically, SDCERS can ensure that no payee has been overlooked. If anyone is returned on this periodic screening, they will immediately be reviewed and their data sent to Cheiron, as appropriate.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

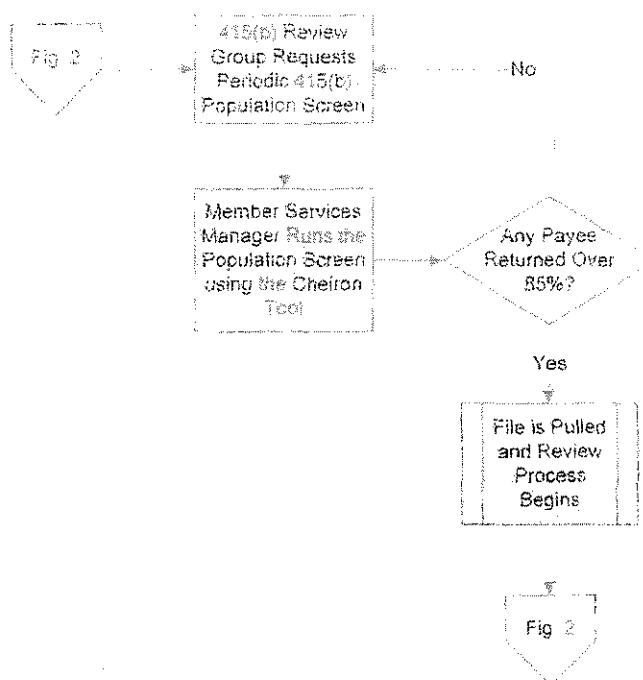


Figure 3


2.4 Monthly Payroll Monitoring

Once a specific limit has been entered into a payee's PensionGold record, their data will appear on monthly payroll monitoring reports. These reports are run as a part of the Normal payroll process, and provide managers with a means of monitoring those payees whose benefits will be capped during the year. The Member Services Manager will review the report, making note of any payees who are projected to exceed their specific limit during the calendar year. Preparations must be made well in advance to ensure that the correct adjustments are in place and that the plan sponsor's 415(m) replacement plan has been funded.

SSN	Subject	Assoc	YTDBenefit	MonthlyBen	ProjectedBen	CAP	AmtOvrCap	LstFulM
			10 613.62	9 306.41	14 194.62	77 360.00	36 844.52	7
		QOW	10 326.12	2 157.11	102 101.61	84 000.00	18 101.61	9

Monthly 415(b) Payroll Report Sample

The 415(b) Payroll Report should be run well in advance of each Normal payroll closing. The Member Services Manager will review the report, making note of any payees who are projected to exceed their specific limit during the calendar year. Preparations must be made well in advance to ensure that the correct PensionGold benefit adjustments are in place and that the plan sponsor's 415(m) replacement plan is ready with replacement

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

benefit funds. Details on how benefits are capped and replaced are presented in the next section.

3 415(b) Capping Process

A modified cliff process allows SDCERS to pay out complete DROP payments, as well as enough retirement benefit dollars to cover any deductions, without exceeding the 415(b) calculated by Cheiron. It will also make it possible to advise the City of the amount needed to fund the 415(m) payment, in advance of cap implementation later in the year.

The only exception to this modified cliff implementation method, is for new retirees receiving less than a full twelve months of benefit payments in their first year.

3.1 Cap Calculation: Pro-rated First Year

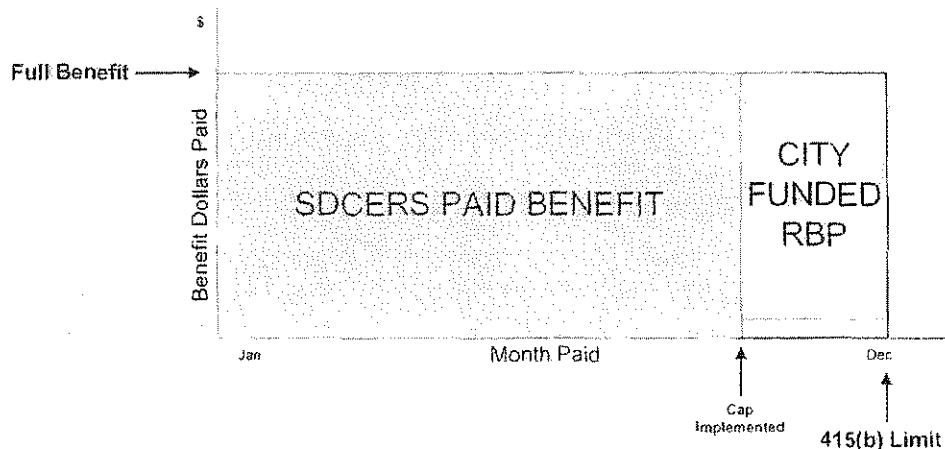
It will be necessary to pro-rate the annual limit and apply it monthly to benefit payments made in an initial partial year of retirement. This means that the first benefit payments made to a member who will exceed their 415(b) limit, may need to be capped. This proration is necessary only in a partial first year of retirement.

3.2 Cap Calculation: Full Year

3.2.1 Accommodations for Payroll Deduction

Cheiron will supply an individually calculated 415(b) limit for each of the payees subject to capping. In order to accommodate DROP payments, and any payroll deductions that the payee may have (this is especially important in the case of healthcare premium deductions), the actual limit implementation point will be adjusted by the total deduction amount times the number of months paid out of the City 415(m) fund.

The following diagram illustrates the cap implementation model:



	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

3.2.2 Exception Cases

- **Final Benefits Check is "Not Enough Gross" to Handle Deductions**

If Payroll Analysis indicates that this is the case, then the cap will be implemented one month earlier. The Payroll Analysis report will be used to confirm correct payments required for each month. All other procedures will remain unchanged.

- **Deduction Change During Capped Period**

If it becomes necessary to change deductions during the capped period (death of a spouse, for example), it will be necessary to complete another Payroll Analysis report and change the offsetting payroll adjustment to accommodate the change. This should be done after the new deduction is in place, as the Analysis report uses the current deduction values stored in PensionGold.

- **Death During Capped Period**

If a payee dies during the capped period, we will have additional benefits that will need to be paid out. This amount will be equal to the amount of the deductions not taken through the end of the year. Replacement benefits equal to this amount may need to be repaid to the City.

3.3 Steps to Implementing 415(b) Cap

3.3.1 Monitor Monthly Payroll Screening Report

Any payee for whom a specific limit has been established by the Cheiron, will be monitored prior to each Normal Payroll, as detailed in section 2.4 above. When it has been confirmed that a payee's projected benefit will exceed their 415(b) limit, their cap will be implemented through a payroll adjustment in their PensionGold record.

3.3.2 Produce Individual Payroll Analysis

- **Run the Payroll Analysis in the Screening Tool**


This tool will help analyze the payments remaining, and calculate the appropriate splits in the transition month.

Report Run Date May 5, 2006

SSN	Subject	Assoc	YTD Benefit Pd	Monthly Ben	Projected Ben	CAP	AmiOvrCap	LstFulMo
XXX-XX-	Loveland, George		\$ 64,774.99	\$ 16,193.75	\$ 194,325.00	\$ 152,031.00	\$ 42,294.00	8
XXX-XX-	Jane Doe	DRO	\$ 18,328.12	\$ 8,157.11	\$ 102,101.61	\$ 84,000.00	\$ 18,101.61	9

Notice that John is expected to receive his last full benefit check from SDCERS in August. So in May, his information is verified and appropriate adjustments made to limit his benefits in PensionGold for September through December.

- **Review Payee's Record**

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

This is a crucial step! While the Payroll Analysis Report will assist the staff members in their 415(b) capping assessment, it cannot and should not be relied upon exclusively. The safest path will be to complete the report, and use it for reference while reviewing the payee's record in PensionGold. Verify the following crucial information:

- Year to Date Gross
- Total Deductions
- 415(b) Limit
- Benefit Dollars Remaining

An important part of the assessment, will be to run the Individual Screening report in the Screening Tool. This report will present the following in detail:

- Annual Benefit/Cap Projections (current year and next year)
- Current Benefit Detail (displaying retirement benefit, DROP, deductions)
- Current Year Monthly Benefit Projections (monthly breakdown of SDCERS paid and City funded payments)

3.3.3 Enter Off-set Adjustments in PensionGold


It can be safely assumed that all payees subject to a 415(b) cap will have an "odd" month where the final benefit dollars paid will not equal a full month's standard benefit payment. This will require two offsetting adjustments be set up.

3.3.4 Withholding Tax Changes

It should be noted that withholding taxes defined for capped members in PensionGold, will need to be halted or revised during capped benefit months. The member should be consulted on how they would like to have their withholding taxes managed.

3.3.5 Continue to Monitor Monthly Report

It is important to continue to monitor capped payees through the final payroll of the year. This is a safeguard against any additional payments setup in error that may take someone over his or her cap. Appropriate managers and staff members should become very familiar with capped payees and their status.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

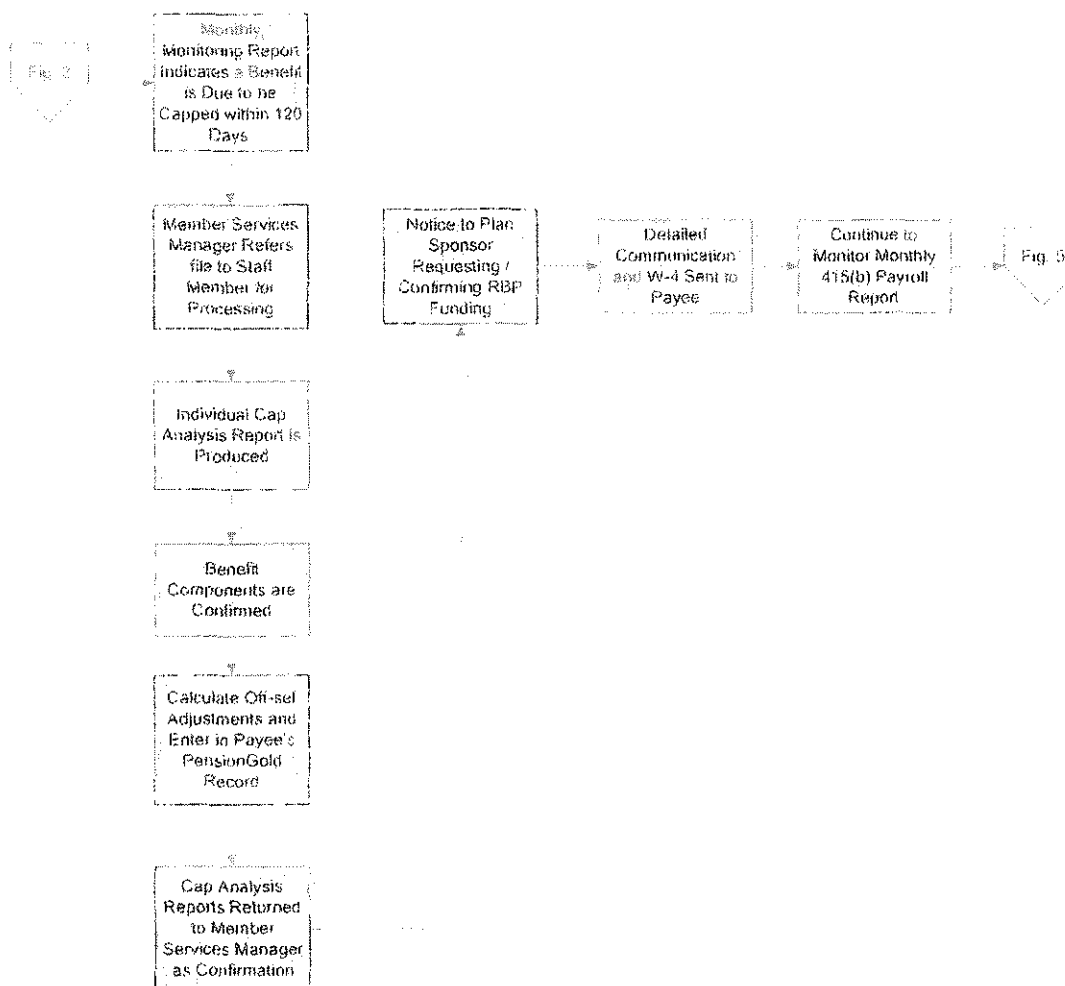



Figure 4

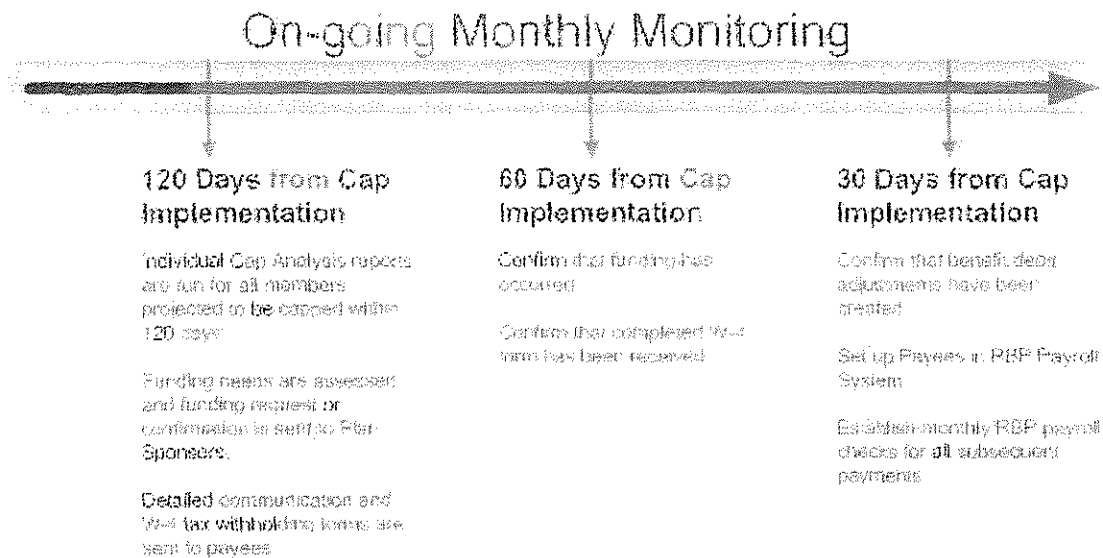
4 415(m) Replacement Benefit Payment Process

SDCERS is responsible for four critical functions in the 415(m) replacement benefit process.

- Communication with Plan Sponsors
- Replacement Benefit Program (RBP) Funding Management
- Issuance of RBP payments to capped payees
- Program Reconciliation and Administrative Cost Allocation

The first three functions must be executed according to the following timeline:

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	




The Program Reconciliation and Cost Allocation functions will be executed during those periods in which payees' benefit are capped and replaced by the RBP.

4.1 Communication with Plan Sponsors

4.1.1 Annual Notification of 415(b) Projections and Reallocations

In January of each year, the Member Services Manager will produce a series of 415 analysis reports, to be used for planning and reconciliation by SDCERS and its Plan Sponsors. The following will be sent to the Plan Sponsors:

1. **Currently Capped Benefits** – This is the report used in the 415(b) Monthly Payroll process. By sending it to the Plan Sponsors early in the year, they will have the information necessary for planning fund transfers and credits to contributions payable.
2. **Retro-active Reallocations as Needed** – If a payee whose benefit has been capped, dies during the period of time that the RBP is active, then he or she will not have reached the full 415(b) benefit cap for the year. In this case, A reallocation of funds must take place between the SDCERS benefit fund and the RBP. The Member Services will need to calculate the amount to be refunded to the RBP and credited to contribution owed by the Plan Sponsors.
3. **Invoice for 415(m) Administration Costs** – SDCERS must be reimbursed for the cost of administering the RBP program on behalf of the Plan Sponsors. In January, the Accounting manager will produce an invoice for each Plan Sponsor, based on the number of payees participating in the RBP during the previous year.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

4.1.2 Periodic Communication and Funding Request

The monthly payroll process¹ includes the generation and review of the Currently Capped Member Benefits report. This listing will be produced by Member Services, reviewed and included in the standard payroll packet of documents.

The Senior Manager responsible for funding management, will determine when and how much money will be needed to fund the RBP. This is done using the Individual Cap Analysis reports for each payee projected to reach the cap within 120 days. These individual reports will break down the amount to be paid each month from the RBP and from SDCERS standard benefits fund.

It will then be necessary to identify the plan sponsors associated with these payees, and to submit a summary funding request, along with copies of the associated Individual Cap Analysis reports.

The following diagram illustrates this high-level process.

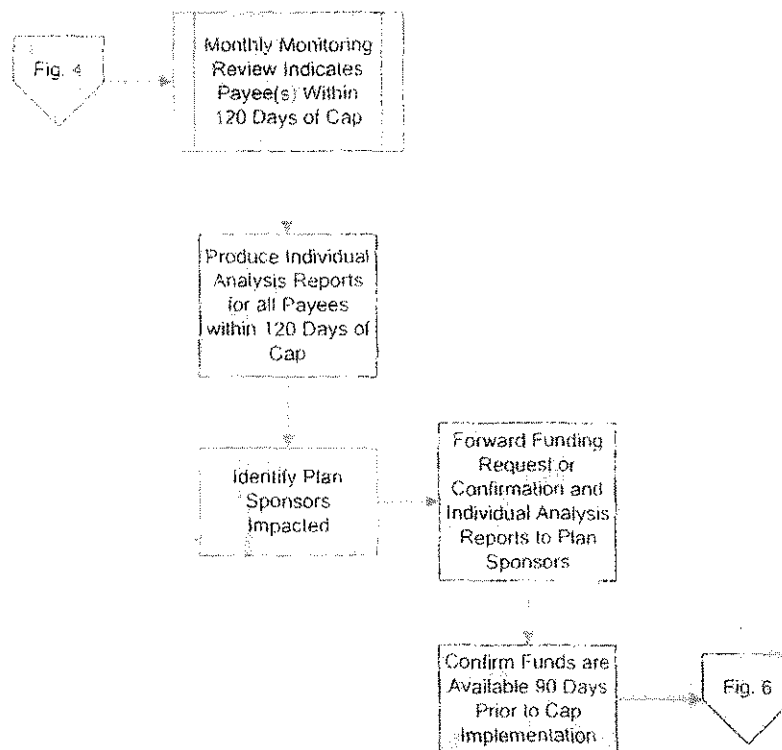



Figure 5

¹ 415(b) tasks in the monthly payroll process are discussed in section 2.4.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

4.2 Replacement Benefit Funding Management

Although SDCERS will be administering the 415(m) RBP program for its Plan Sponsors, all funds used to pay replacement benefits to payees capped by 415(b) limits, must be provided by the Plan Sponsors. Further, these funds must be maintained in an account clearly separate from SDCERS' benefit funds.

Upon receipt of the funding request from SDCERS, each Plan Sponsor will have sixty days to transfer the money into the RBP account. The Accounting manager will monitor this account to ensure that the funds are received in time to pay out to capped members.

4.3 Issuance of RBP Payments to Capped Payees

4.3.1 Preparation

Sixty days prior to issuing an RBP payment to a payee, the Accounting department will confirm that the following information and documentation is available:

1. W-4 form completed by Payee
2. Social Security number
3. Full name and mailing address
4. EFT banking information as applicable

Thirty days prior to issuing an RBP payment, it will be necessary to confirm that the payroll debit adjustments have been set correctly in the payee's PensionGold record. This is confirmed by running the Individual Cap Analysis report for the payee, and comparing it to the records in PensionGold.

- * Confirm that the **Effective Date From** of the 415(b) adjustment is the first day of the first month in which the 415(b) cap will be implemented. In all likelihood, if the payee will be capped for more than one month, it will be necessary to enter more than one adjustment for the payee. This is because there is an "odd" amount paid out in the first capped month, as illustrated in the following example:



Project: SDCERS Tax Compliance

Document: 415(b)

Mary Anne Walker
DRAFT 08/09/2006

Individual 415 Cap Analysis

TAXES

Payee:

Member:

(General, Non-Exempt)

Annual Cap Projections

Year	Subject	Adj Entry	Ref Date	Assoc	CurYrPrctn	Cap	CurYrOverCap	NextYrPrctn
2006		11/1/06	4/1/06		\$8,777.75	\$0,502.56	7,275.29	101,363.68

Current Benefit Detail

Months Left	Monthly Ben	Monthly Annuity	Monthly MBRP	Benefit YTD	Benefit Ld3
6	\$8,258.26	\$961.29		\$50,311.46	\$5,160.13

Current Year Monthly Benefit Projections

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Paid	Paid	Paid	Paid	\$8,258.26	\$8,258.26	\$8,258.26	\$8,258.26	\$8,258.26	\$8,258.26	\$7,678.28	\$961.29

* Assoc codes represent certain payment types associated with the member account.

1 = Continuance, CO = Continuance Only and retirement benefit exists, S = Surviving, QO = (QOP) Q to Order, JN = (JNR) J to Order

We can see that two adjustments will be needed, in different amounts to achieve the payment indicated:


November

Monthly Benefit: \$8,258.26
Max Benefit to be Paid: \$7,678.28
Adjustment Amount: \$ 579.98
Effective From: November 1st, 200X
Effective Until: November 30th, 200X

December

Monthly Benefit: \$8,258.26
Max Benefit to be Paid: \$ 961.29
Adjustment Amount: \$ 7,296.97
Effective From: December 1st, 200X
Effective Until: December 31st, 200X

Note that these adjustments are only effective for a single month, and beginning in January of the subsequent year the payee will be returned to their full benefit payment. It should be further noted that these two adjustment amounts are also the amount of 415(m)

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

payments needed from the plan sponsor in each capped month to total the regular monthly benefit.


The Member Services department is responsible for creating the adjustments at least ninety days prior to the first capped month. The Member Services Manager will verify that they have been created, and coordinate with the Accounting Department to ensure that the RBP payment will equal the adjustment amount.

Thirty days prior to issuing an RBP payment, the Accounting department must establish a payment record for the payee in the RBP payroll system. The record must include appropriate payroll tax withholdings, processed using the associated Plan Sponsor's Employer Identification Number (EIN). If the payee will be receiving the RBP as an EFT transfer, it will be necessary to make those bank file transfer preparations as well.

4.3.2 Payment Issuance

It is very important that SDCERS work to minimize the impact that 415(b) benefit capping and 415(m) benefit replacement has on its members and their associated payees. Toward this end, the Member Services Manager must ensure that the payee's RBP payment is received at the same time as the regular benefit payment portion. If the payee receives a check, then the Accounting manager should forward it to Member Services so that it can be combined in a single mailing. If the payee receives an EFT, then every effort will be made to ensure that both EFTs are credited to the payee's account on the same day. Advice notices should be combined in a single mailing.

Tax withholding deposits must be made according to the IRS rules, and using the EIN associated with each Plan Sponsor associated with capped the payees. Each January, a W-2 will be issued to each payee that received 415(m) replacement benefits from the RBP. These will be issued by the Accounting department, and must be reconciled to the withholding tax amounts reported during the year.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

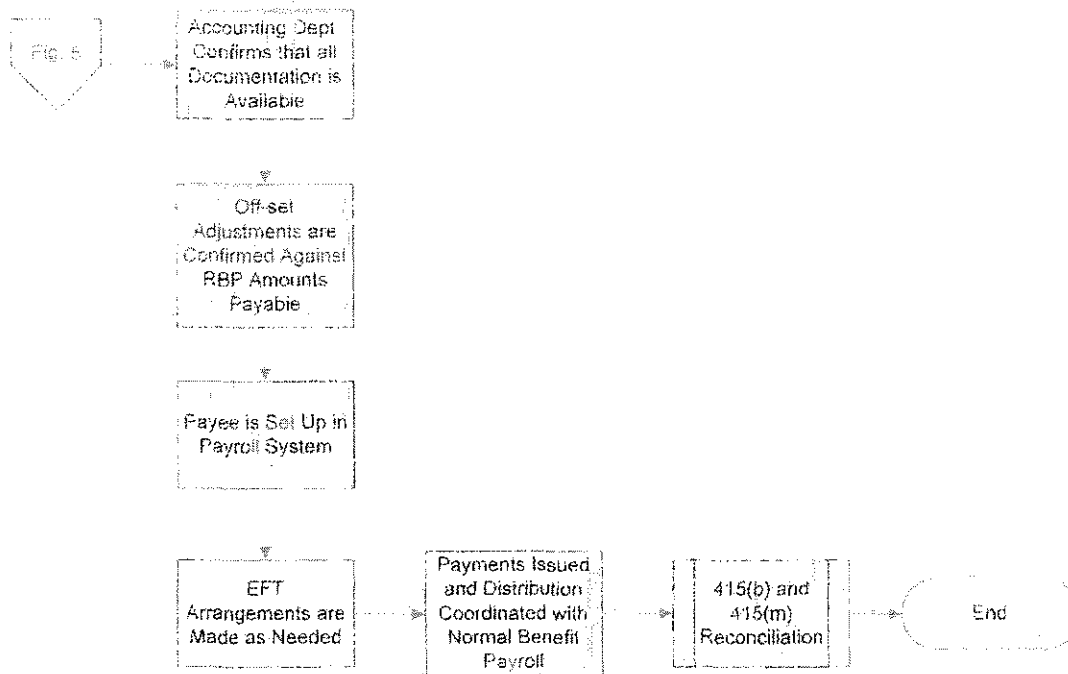



Figure 6

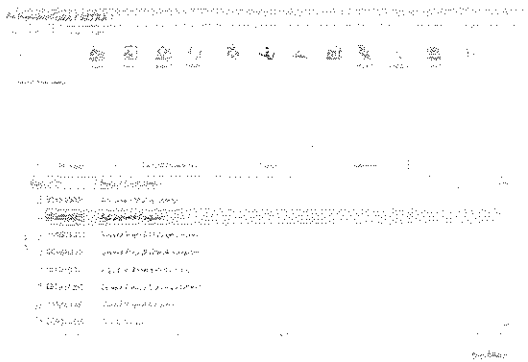
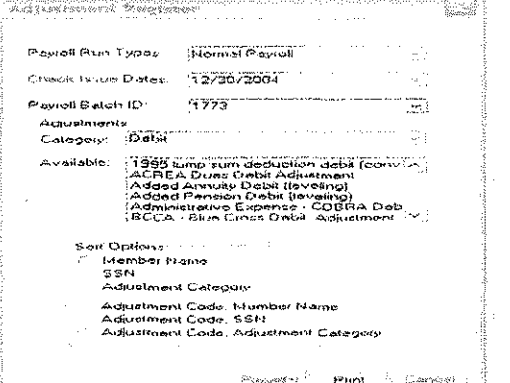
5 Program Reconciliation & Cost Allocation

5.1 Tools

5.1.1 415(b) Payroll Adjustments

PensionGold produces the primary payroll report used by the Accounting Staff for their reconciliation. The Adjustments Register (BENR0002) is a member-level detailed report, and will supply the analysts with complete data on any 415(b) adjustments during a particular payroll. The following steps are taken to run this report:

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

1 Select BENR0002 from the PensionGold Report Manager. 	2. Select report parameters. 
--	---

The Report may then be previewed or printed.

Run Date: 08/19/2006
Run Time: 1:43 PM
User for: Mary Anne Walker - Linda Schubert
Page: 1

Check Issue Date: 12/31/2004
Payroll Run Mode: Gross Run

Adjustment Register

Member SSN	Period Type	Adjustment Code	Adjustment Category	Payroll Date	Amount	Applied Prior To Tax Calculations	Pay To Date
XXXX-XX-XXXX	Service	415(b) Limit	Debit	12/31/2004	10.00	Yes	12/31/2004
XXXX-XX-XXXX	Service	415(b) Limit	Debit	12/31/2004	2144.32	Yes	12/31/2004
XXXX-XX-XXXX	Service	415(b) Limit	Debit	12/31/2004	1825.80	Yes	12/31/2004

The information here should be verified against the Individual Cap Analysis reports, for each of the payees affected.

5.2 Administrative Cost Allocation

As noted above, Plan Sponsors must pay the costs incurred by SDCERS for administering the 415(m) RBP program. In January of each year, The Accounting manager will prepare an invoice for each Plan Sponsor for whom the 415(m) program was implemented.

This invoice will contain a listing of the payees for whom RBP payments were issued, along with the total number of payments issued. The administrative cost per payee per month will be multiplied by the number of payees participating in the RBP program for each Plan Sponsor. To this sub-total will be added the cost of tax withholding and reporting for each payee.

Under no circumstances are administrative costs to be paid out of the Replacement Benefit Fund. The Replacement Benefit Fund is only to be used to pay replacement benefits to the member, or the member's associated payees. Amounts received by

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 08/09/2006
	Document: 415(b)	

SDCERS for administration of the RBP will not be combined or in any way mixed with those funds used to pay replacement benefits.


6 Error Resolution

If any discrepancy is found, the Accounting Assistant Manager will immediately notify the Benefit Manager and confirm that the 415(b) Payroll adjustments taken were appropriate and correctly reflected all 415(b) limit reporting used during the process. If the discrepancy is found to be on the Plan Sponsor side, the Accounting Manager will contact the appropriate Plan Sponsor representative to report all findings and provide documentation as needed for resolution.

Version Control

Version	Date	Changes from previous version
1.0	05/05/06	Initial Draft

Exhibit D

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 06/27/2006
	Document: 415(c) Operational Process	

415(c) Operational Process

1 Overview

This document presents the operational process implemented by SDCERS to:

1. Screen individual post-tax contributions for 415(c) compliance, prior to acceptance;
2. Screen entire active member population with post-tax contributions annually;
3. Implement a refund of contributions program for those members found to have contributed beyond the applicable 415(c) limits.

The key stakeholders in this process are:

- **Active Members** making post-tax contributions;
- **Plan Sponsors** who employ SDCERS members;
- **Member Services staff members**, responsible for qualifying and accepting post-tax contributions;
- **Member Services manager(s)**, responsible for monitoring requests for post-tax service purchase contributions, and coordinating communication and information exchange with plan sponsors;

Also responsible for annual active population screening and implementation of reduction according to priority agreed upon with plan sponsors.

The highest level process flow is as follows:

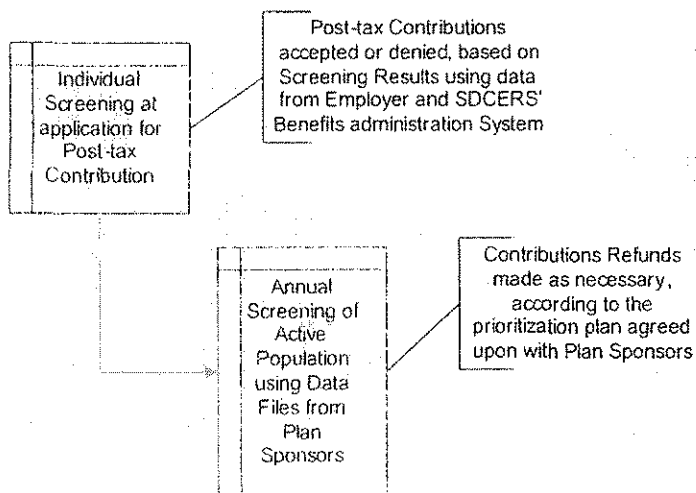



Figure 1

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 06/27/2006
	Document: 415(c) Operational Process	

2 415(c) Post-tax Contribution Screening

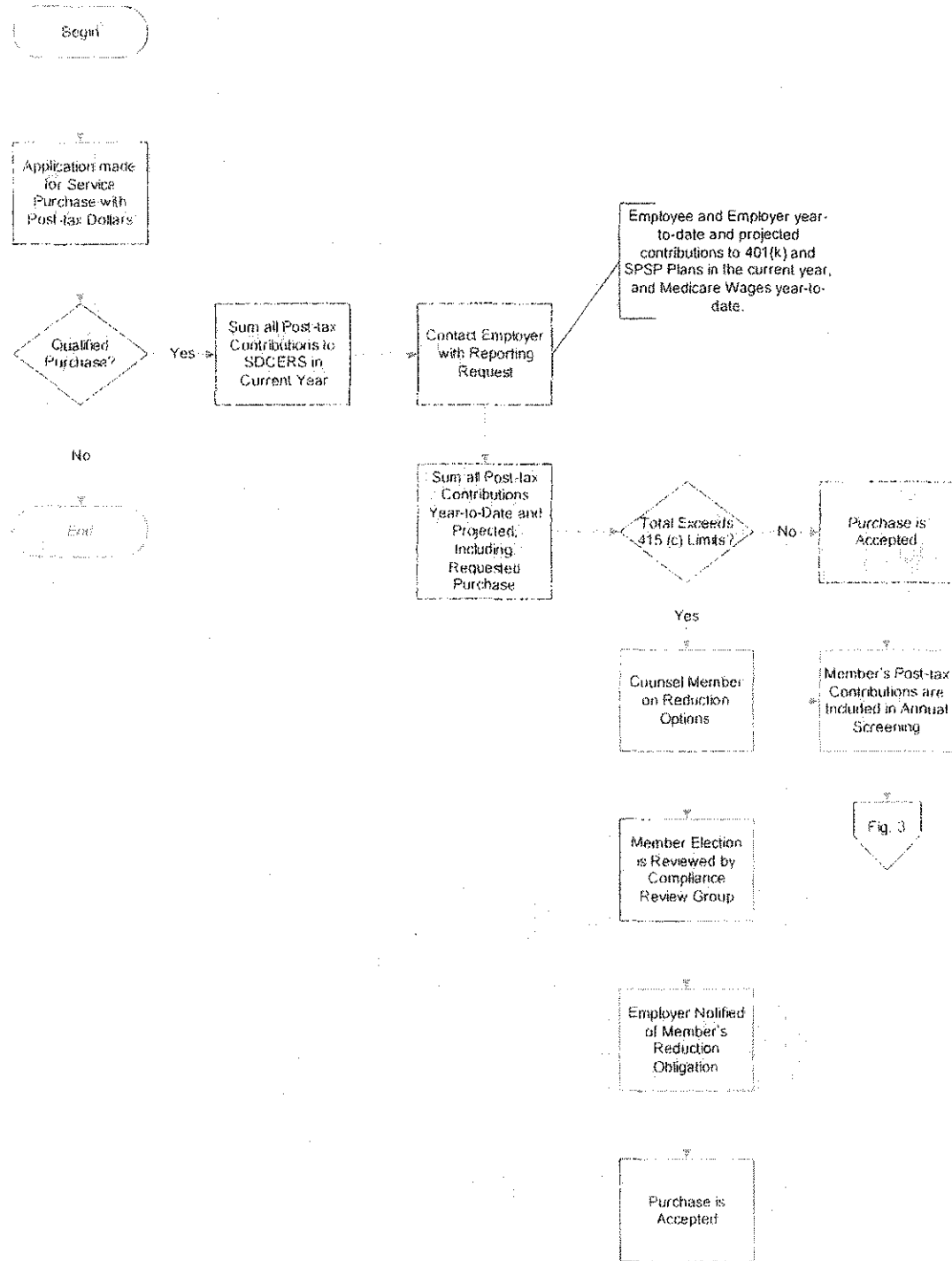



Figure 2

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 06/27/2006
	Document: 415(c) Operational Process	

2.1 Individual Application and Screening Process

When SDCERS is approached by an active member with a request to purchase service time using post-tax dollars, SDCERS must complete 415(c) screening prior to accepting the purchase.

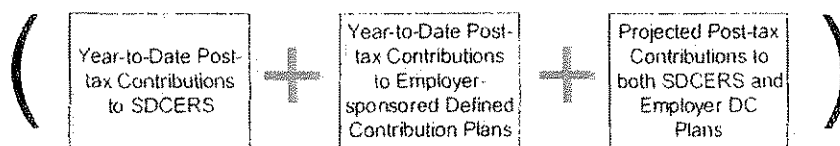
2.1.1 Aggregation of All Post-tax Annual Contributions

Step 1. Review and Qualify Application for Service Purchase

SDCERS' Member Services staff members will receive the request for service purchase from an active member, and determine whether or not the member is actually eligible to purchase the time requested.¹ If eligible to make the purchase, and the purchase is to be made with post-tax dollars for any type of service *other than permissive service credit*, the application is marked for 415(c) testing before the application and any funds have been accepted. For a detailed explanation of permissive service credit, please see the Ice Miller 415 report.

Step 2. Aggregation of Current Year Contributions

- Sum all year-to-date non-permissive service credit purchases, made with post-tax SDCERS contributions by the member.
- Contact the member's employer with a request for a report of the member's year-to-date after-tax contributions to 401(k) and SPSP plans. It is important that this report also indicate the *projected* contribution total for the current year, and that both employee and employer contributions are included. Further, the report must include the member's year-to-date Medicare wages.
- Assess the year-to-date total and projected current grand total of all post-tax contributions, including the requested service purchase.




2.1.2 Testing and Contribution Reduction

Step 3. Testing Against 415(c) Limits

- Compare the sum total of all year-to-date and projected post-tax contributions, as derived in Step 2 above, to the current year 415(c) limits. If the sum total is less

¹ This is done according to the existing process for processing service time.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 06/27/2006
	Document: 415(c) Operational Process	

than the applicable 415(c) limit,² then the post-tax service purchase may be accepted by SDCERS.


- If the sum total is greater than the applicable limit, the member must be counseled on the need to reduce or stop his or her contributions to the employer's defined contribution plans in the current year. Reductions may also be necessary in the following year(s) if a long term service purchase contract is established with SDCERS.

$$\left(\begin{array}{|c|} \hline \text{Year-to-Date Post-tax Contributions to SDCERS} \\ \hline \end{array} \right) + \begin{array}{|c|} \hline \text{Year-to-Date Post-tax Contributions to Employer-sponsored Defined Contribution Plans} \\ \hline \end{array} + \begin{array}{|c|} \hline \text{Projected Post-tax Contributions to both SDCERS and Employer DC Plans} \\ \hline \end{array} \right) < \begin{array}{|c|} \hline \text{Lesser of 100\% of Compensation OR Current Contribution Limit as Set by IRS} \\ \hline \end{array}$$

Step 4. Contribution Reduction

- After counseling, if the member elects to make the SDCERS service purchase and reduce contributions to the employer's DC plans, a worksheet will be given to the member, and a copy forwarded to the employer.
- The worksheet will contain the following critical information:
 1. The applicable 415(c) limit for the current year
 2. Calculations indicating the amount that will exceed the limit, if the purchase is made
 3. Required reductions, according to the following priority:
 - First: 401(k) – excess contributions refunded to the member
 - Second: SPSP - voluntary contributions only
 - Third: SDCERS – purchase total reduced
 4. Total amount of service to be purchased, and the total amount in post tax dollars to be accepted by SDCERS.
 5. Member's signed acceptance of responsibility for notifying his or her employer of the necessary reduction(s) to the DC plans.

² For detailed information on how to determine which limit will apply, please see the Ice Miller 415 Strategy Report.

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 06/27/2006
	Document: 415(c) Operational Process	

2.2 Annual Screening Process

At the end of each calendar year, SDCERS will test all members from whom post-tax contributions were accepted during the year. In order to execute this test, it will be necessary to receive a data file from each of the plan sponsors. This information will be combined with post-tax contribution data from PensionGold, and analyzed. Any member found to have over-contributed during the year, will receive a refund of those excess contributions.

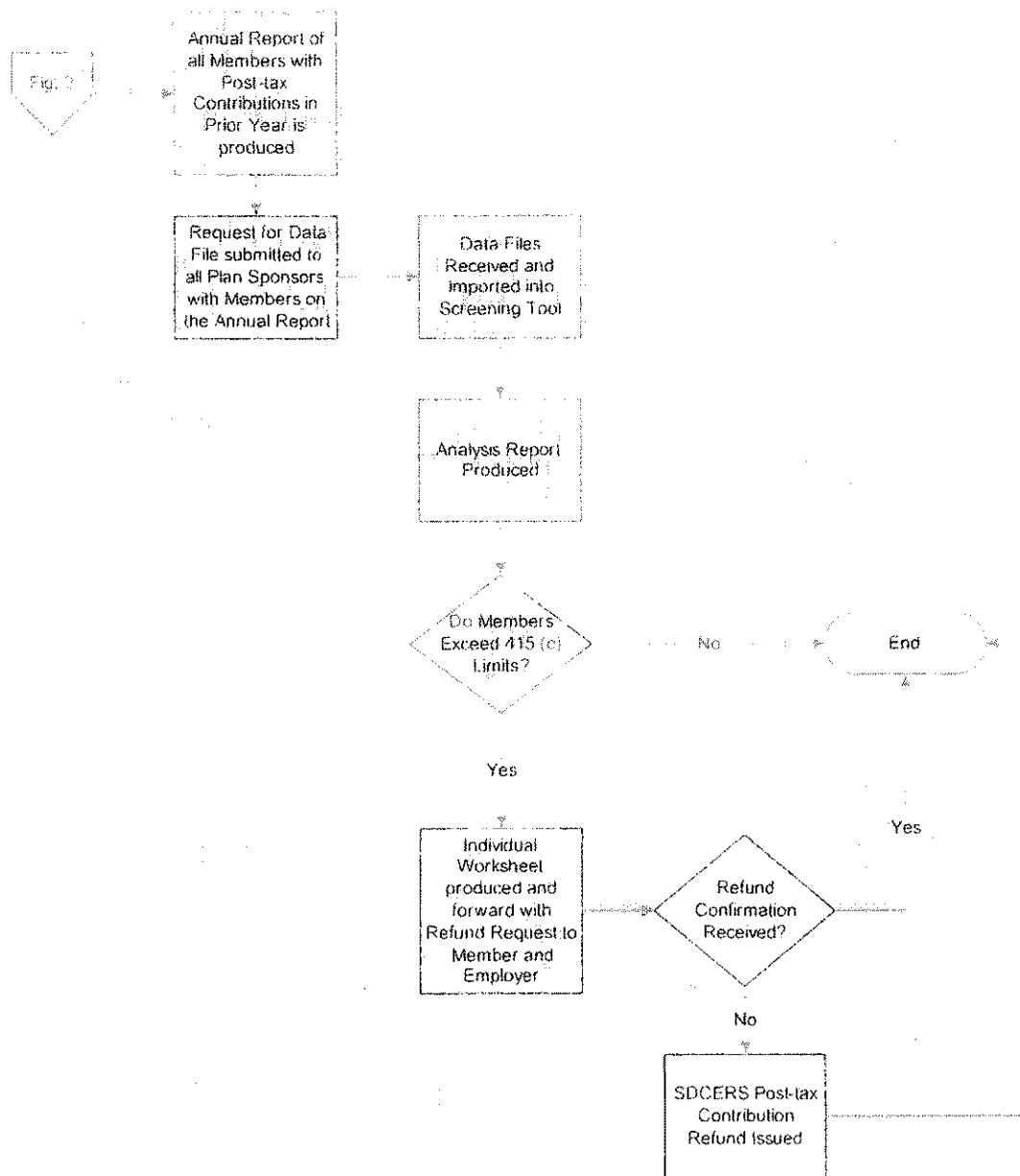



Figure 3

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 06/27/2006
	Document: 415(c) Operational Process	

2.2.1 Production of the Annual Report

In February of each year, the Member Services manager will produce the 415 (c) Annual Report for the previous calendar year, using the 415 Screening Tool. This report will provide a listing of all members with post-tax contributions during the previous year, along with the following information that will make it possible to request plan sponsor data:

- Name
- Employee ID or SSN
- Employer
- Total Post-tax Contributions
- 415(c) Limit (as determined at point of Service Purchase)
- Reduction Required Y/N (at the point of Service Purchase)

2.2.2 Receipt of Plan Sponsor Data

In February of each year, SDCERS will request a data file from each of its plan sponsors, to be used in 415(c) limit testing for the previous calendar year. This file must contain the following information for each of the SDCERS members requested:


- Name
- Employee ID or SSN
- Total Medicare Wages
- Total 401(k) Employee Contributions
- Total 401(k) Employer Contributions
- Total SPSP Employee Contributions
- Total SPSP Employer Contributions

When the plan sponsor's data files are received by SDCERS, they will be imported into the screening tool, and the 415(c) Annual Analysis report will be produced.

2.2.3 Production of the Annual Analysis Report

The Annual Analysis Report will return a detailed listing of all members with post-tax contributions to SDCERS in the calendar year selected by the user. The tool will use both PensionGold data and the plan sponsors' data files to determine whether the members listed have exceeded the 415(c) limit. The following information will be included for all members returned on this report:

- Name
- Employee ID or SSN

	Project: SDCERS Tax Compliance	Mary Anne Walker DRAFT 06/27/2006
	Document: 415(c) Operational Process	

- Employer
- Total Medicare Wages
- Total 401(k) Employee Contributions
- Total 401(k) Employer Contributions
- Total SPSP Employee Contributions
- Total SPSP Employer Contributions
- Total SDCERS Post-tax Contributions
- Grand Total Post-tax Contributions in All Plans
- 415(c) Limit
- Contribution Amount Exceeding Limit (if any)

2.2.4 Process to Return Excess Contributions

If any member on the Annual Analysis Report is found to have an amount exceeding his or her 415(c) limit, the Member Services manager will review that member's file. The file should contain the worksheet produced during the service purchase process. The file may then be referred to the Compliance Review Group for further review, as appropriate.

Step 1. Send Notification and Return of Contributions Request

Detailed communication and a completed worksheet will be sent to the member and the member's employer. This communication will clearly state the amount and source of excess contributions that must be returned to the member, according to the following priority:

First: 401(k) – excess contributions refunded to the member

Second: SPSP - voluntary contributions only

Third: SDCERS – purchase total reduced

Step 2. Receive Confirmation of Returned Contributions

This communication will include a request for confirmation of the returned contributions, once completed. If confirmation is not received within 120 days of the request, SDCERS will return the excess contributions from the member's SDCERS account, reducing service time accordingly.

Version Control

Version	Date	Changes from previous version
1.0	06/27/06	Initial Draft

Exhibit E

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Amount Overpaid	Overpayments
								Rolled Forward to 6/30/2007
1	12/7/2004	9/7/1960	2005	100,278.49	NO	33,439.08	66,839.41	77,961.49
1	12/7/2004	9/7/1960	2006	100,278.49	NO	34,437.26	65,841.23	71,108.53
1	12/7/2004	9/7/1960	2007	100,278.49	NO	35,435.44	64,843.05	64,843.05
2	12/31/2005	12/2/1948	2006	204,988.17	NO	106,719.02	98,269.15	106,130.68
2	12/31/2005	12/2/1948	2007	204,988.17	NO	109,812.32	95,175.85	95,175.85
3	11/5/2004	11/5/1949	2005	143,700.01	NO	85,368.35	58,331.66	68,038.05
3	11/5/2004	11/5/1949	2006	143,700.01	NO	87,916.66	55,783.35	60,246.02
3	11/5/2004	11/5/1949	2007	143,700.01	NO	90,464.97	53,235.04	53,235.04
4	4/27/2005	3/19/1945	2005	251,414.37	NO	138,674.31	112,740.06	131,500.01
4	4/27/2005	3/19/1945	2006	251,414.37	NO	142,813.84	108,600.53	117,288.58
4	4/27/2005	3/19/1945	2007	251,414.37	NO	146,953.37	104,461.00	104,461.00
5	4/22/2004	2/25/1947	2004	172,743.70	NO	101,303.37	71,440.33	89,994.24
5	4/22/2004	2/25/1947	2005	172,743.70	NO	104,420.40	68,323.30	79,692.30
5	4/22/2004	2/25/1947	2006	172,743.70	NO	107,537.43	65,206.27	70,422.77
5	4/22/2004	2/25/1947	2007	172,743.70	NO	110,654.45	62,089.25	62,089.25
6	11/4/2004	8/31/1948	2005	148,155.91	NO	95,257.51	52,898.40	61,700.69
6	11/4/2004	8/31/1948	2006	148,155.91	NO	98,101.02	50,054.89	54,059.28
6	11/4/2004	8/31/1948	2007	148,155.91	NO	100,944.53	47,211.38	47,211.38
7	2/3/2006	11/11/1945	2006	221,407.84	NO	144,611.94	76,795.90	82,939.57
7	2/3/2006	11/11/1945	2007	221,407.84	NO	148,803.59	72,604.25	72,604.25
8	7/20/2002	3/29/1947	2003	111,348.22	NO	83,668.56	27,679.66	37,657.88
8	7/20/2002	3/29/1947	2004	111,348.22	NO	85,290.18	26,058.04	32,825.63
8	7/20/2002	3/29/1947	2005	111,348.22	NO	87,914.50	23,433.72	27,333.09
8	7/20/2002	3/29/1947	2006	111,348.22	NO	90,538.81	20,809.41	22,474.17
8	7/20/2002	3/29/1947	2007	111,348.22	NO	93,163.13	18,185.09	18,185.09
9	12/18/2004	10/8/1949	2005	120,209.72	NO	86,974.03	33,235.69	38,766.11
9	12/18/2004	10/8/1949	2006	120,209.72	NO	89,570.27	30,639.45	33,090.60
9	12/18/2004	10/8/1949	2007	120,209.72	NO	92,166.51	28,043.21	28,043.21
10	10/11/2003	2/17/1948	2004	133,200.92	NO	88,027.37	45,173.55	56,905.66
10	10/11/2003	2/17/1948	2005	133,200.92	NO	90,735.91	42,465.01	49,531.19
10	10/11/2003	2/17/1948	2006	133,200.92	NO	93,444.44	39,756.48	42,937.00
10	10/11/2003	2/17/1948	2007	133,200.92	NO	96,152.98	37,047.94	37,047.94
11	2/12/2005	9/11/1949	2005	120,870.33	NO	88,832.03	32,038.30	37,369.47
11	2/12/2005	9/11/1949	2006	120,870.33	NO	91,483.73	29,386.60	31,737.53
11	2/12/2005	9/11/1949	2007	120,870.33	NO	94,135.44	26,734.89	26,734.89
12	12/16/2003	10/23/1946	2004	139,661.73	NO	101,193.23	38,468.50	48,459.23
12	12/16/2003	10/23/1946	2005	139,661.73	NO	104,306.87	35,354.86	41,237.90
12	12/16/2003	10/23/1946	2006	139,661.73	NO	107,420.51	32,241.22	34,820.51
12	12/16/2003	10/23/1946	2007	139,661.73	NO	110,534.15	29,127.58	29,127.58
13	4/15/2005	7/18/1948	2005	122,896.21	NO	100,432.04	22,464.17	26,202.20
13	4/15/2005	7/18/1948	2006	122,896.21	NO	103,430.01	19,466.20	21,023.49
13	4/15/2005	7/18/1948	2007	122,896.21	NO	106,427.98	16,468.23	16,468.23
14	1/17/2006	1/16/1951	2006	104,313.92	NO	87,940.28	16,373.64	17,683.53
14	1/17/2006	1/16/1951	2007	104,313.92	NO	90,489.27	13,824.65	13,824.65
15	3/31/2001	3/15/1946	2001	97,267.59	NO	75,000.00	22,267.59	35,335.87
15	3/31/2001	3/15/1946	2002	97,267.59	NO	78,134.72	19,132.87	28,112.47
15	3/31/2001	3/15/1946	2003	97,267.59	NO	81,582.95	15,684.64	21,338.78
15	3/31/2001	3/15/1946	2004	97,267.59	NO	83,176.09	14,091.50	17,751.24
15	3/31/2001	3/15/1946	2005	97,267.59	NO	85,735.36	11,532.23	13,451.20
15	3/31/2001	3/15/1946	2006	97,267.59	NO	88,294.62	8,972.97	9,690.81
15	3/31/2001	3/15/1946	2007	97,267.59	NO	90,853.89	6,413.70	6,413.70
16	3/9/2006	7/28/1947	2006	161,972.60	NO	123,600.91	38,371.69	41,441.42
16	3/9/2006	7/28/1947	2007	161,972.60	NO	127,183.55	34,789.05	34,789.05
17	9/28/2005	9/28/1950	2006	106,276.42	NO	87,916.66	18,359.76	19,828.54
17	9/28/2005	9/28/1950	2007	106,276.42	NO	90,464.97	15,811.45	15,811.45

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Amount Overpaid	Overpayments
								Rolled Forward to 6/30/2007
18	7/24/2002	3/1/1947	2003	95,574.83	NO	84,371.08	11,203.75	15,242.58
18	7/24/2002	3/1/1947	2004	95,574.83	NO	86,002.30	9,572.53	12,058.63
18	7/24/2002	3/1/1947	2005	95,574.83	NO	88,648.52	6,926.31	8,078.85
18	7/24/2002	3/1/1947	2006	95,574.83	NO	91,294.75	4,280.08	4,622.49
18	7/24/2002	3/1/1947	2007	95,574.83	NO	93,940.97	1,633.86	1,633.86
19	12/31/2005	1/22/1951	2006	206,212.15	YES	172,500.00	33,712.15	36,409.12
19	12/31/2005	1/22/1951	2007	206,212.15	YES	177,500.00	28,712.15	28,712.15
20	4/22/2004	3/2/1945	2004	142,331.77	NO	122,423.35	19,908.42	25,078.87
20	4/22/2004	3/2/1945	2005	142,331.77	NO	126,190.22	16,141.55	18,827.50
20	4/22/2004	3/2/1945	2006	142,331.77	NO	129,957.09	12,374.68	13,364.65
20	4/22/2004	3/2/1945	2007	142,331.77	NO	133,723.96	8,607.81	8,607.81
21	5/28/2003	9/29/1947	2003	103,988.00	NO	86,478.65	17,509.35	23,821.27
21	5/28/2003	9/29/1947	2004	103,988.00	NO	88,138.64	15,849.36	19,965.62
21	5/28/2003	9/29/1947	2005	103,988.00	NO	90,850.60	13,137.40	15,323.46
21	5/28/2003	9/29/1947	2006	103,988.00	NO	93,562.56	10,425.44	11,259.47
21	5/28/2003	9/29/1947	2007	103,988.00	NO	96,274.52	7,713.48	7,713.48
22	4/22/2004	6/3/1945	2004	141,133.95	NO	119,446.29	21,687.66	27,320.20
22	4/22/2004	6/3/1945	2005	141,133.95	NO	123,121.56	18,012.39	21,009.65
22	4/22/2004	6/3/1945	2006	141,133.95	NO	126,796.83	14,337.12	15,484.09
22	4/22/2004	6/3/1945	2007	141,133.95	NO	130,472.10	10,661.85	10,661.85
23	12/31/2005	7/10/1948	2006	121,744.43	NO	110,869.53	10,874.90	11,744.89
23	12/31/2005	7/10/1948	2007	121,744.43	NO	114,083.14	7,661.29	7,661.29
24	7/17/2004	1/12/1946	2005	145,796.29	NO	118,878.30	26,917.99	31,397.14
24	7/17/2004	1/12/1946	2006	145,796.29	NO	122,426.91	23,369.38	25,238.93
24	7/17/2004	1/12/1946	2007	145,796.29	NO	125,975.51	19,820.78	19,820.78
25	1/29/2005	9/23/1949	2005	96,103.68	NO	88,258.57	7,845.11	9,150.54
25	1/29/2005	9/23/1949	2006	96,103.68	NO	90,893.16	5,210.52	5,627.36
25	1/29/2005	9/23/1949	2007	96,103.68	NO	93,527.74	2,575.94	2,575.94
26	9/16/2005	6/8/1950	2006	98,249.13	NO	90,231.71	8,017.42	8,658.82
26	9/16/2005	6/8/1950	2007	98,249.13	NO	92,847.12	5,402.01	5,402.01
27	5/1/2004	3/24/1949	2004	183,241.09	YES	162,500.00	20,741.09	26,127.80
27	5/1/2004	3/24/1949	2005	183,241.09	YES	167,500.00	15,741.09	18,360.41
27	5/1/2004	3/24/1949	2006	183,241.09	YES	172,500.00	10,741.09	11,600.38
27	5/1/2004	3/24/1949	2007	183,241.09	YES	177,500.00	5,741.09	5,741.09
28	1/1/2005	4/15/1949	2005	99,632.64	NO	91,240.55	8,392.09	9,788.54
28	1/1/2005	4/15/1949	2006	99,632.64	NO	93,964.15	5,668.49	6,121.97
28	1/1/2005	4/15/1949	2007	99,632.64	NO	96,687.75	2,944.89	2,944.89
29	6/5/2004	8/7/1946	2004	173,770.01	YES	162,500.00	11,270.01	14,196.97
29	6/5/2004	8/7/1946	2005	173,770.01	YES	167,500.00	6,270.01	7,313.34
29	6/5/2004	8/7/1946	2006	173,770.01	YES	172,500.00	1,270.01	1,371.61
29	6/5/2004	8/7/1946	2007	173,770.01	YES	177,500.00	-	-
30	7/6/2002	12/13/1946	2003	91,561.59	NO	85,688.31	5,873.28	7,990.53
30	7/6/2002	12/13/1946	2004	91,561.59	NO	87,337.51	4,224.08	5,321.12
30	7/6/2002	12/13/1946	2005	91,561.59	NO	90,024.82	1,536.77	1,792.49
30	7/6/2002	12/13/1946	2006	91,561.59	NO	92,712.13	-	-
30	7/6/2002	12/13/1946	2007	91,561.59	NO	95,399.44	-	-
31	10/13/2004	10/12/1949	2005	90,492.17	NO	85,391.28	5,100.89	5,949.68
31	10/13/2004	10/12/1949	2006	90,492.17	NO	87,940.28	2,551.89	2,756.04
31	10/13/2004	10/12/1949	2007	90,492.17	NO	90,489.27	2.90	2.90
32	9/17/2001	6/13/1943	2002	106,181.46	NO	92,662.33	13,519.13	19,864.04
32	9/17/2001	6/13/1943	2003	106,181.46	NO	110,563.73	-	-
32	9/17/2001	6/13/1943	2004	106,181.46	NO	112,534.10	-	-
32	9/17/2001	6/13/1943	2005	106,181.46	NO	115,996.69	-	-
32	9/17/2001	6/13/1943	2006	106,181.46	NO	119,459.28	-	-
32	9/17/2001	6/13/1943	2007	106,181.46	NO	122,921.86	-	-
33	6/29/2005	5/13/1947	2005	169,585.61	YES	167,500.00	2,085.61	2,432.66
33	6/29/2005	5/13/1947	2006	169,585.61	YES	172,500.00	-	-
33	6/29/2005	5/13/1947	2007	169,585.61	YES	177,500.00	-	-

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Overpayments	
							Amount Overpaid	Rolled Forward to 6/30/2007
34	6/28/2003	10/30/1946	2003	96,544.86	NO	94,944.10	1,600.76	2,177.82
34	6/28/2003	10/30/1946	2004	96,544.86	NO	96,716.92	-	-
34	6/28/2003	10/30/1946	2005	96,544.86	NO	99,692.82	-	-
34	6/28/2003	10/30/1946	2006	96,544.86	NO	102,668.73	-	-
34	6/28/2003	10/30/1946	2007	96,544.86	NO	105,644.63	-	-
35	9/1/2004	1/20/1945	2005	172,234.34	YES	167,500.00	4,734.34	5,522.14
35	9/1/2004	1/20/1945	2006	172,234.34	YES	172,500.00	-	-
35	9/1/2004	1/20/1945	2007	172,234.34	YES	177,500.00	-	-
36	4/8/2006	1/3/1949	2006	110,937.20	NO	108,648.13	2,289.07	2,472.20
36	4/8/2006	1/3/1949	2007	110,937.20	NO	111,797.35	-	-
37	3/1/2002	10/21/1950	2002	153,216.61	YES	150,000.00	3,216.61	4,726.26
37	3/1/2002	10/21/1950	2003	153,216.61	YES	160,000.00	-	-
37	3/1/2002	10/21/1950	2004	153,216.61	YES	162,500.00	-	-
37	3/1/2002	10/21/1950	2005	153,216.61	YES	167,500.00	-	-
37	3/1/2002	10/21/1950	2006	153,216.61	YES	172,500.00	-	-
37	3/1/2002	10/21/1950	2007	153,216.61	YES	177,500.00	-	-
38	2/2/2001	8/23/1944	2001	191,776.47	NO	75,000.00	116,776.47	185,309.58
38	2/2/2001	8/23/1944	2002	191,776.47	NO	83,863.19	107,913.28	158,560.01
38	2/2/2001	8/23/1944	2003	191,776.47	NO	93,015.89	98,760.58	134,362.68
38	2/2/2001	8/23/1944	2004	191,776.47	NO	94,763.30	97,013.17	122,208.65
38	2/2/2001	8/23/1944	2005	191,776.47	NO	97,679.09	94,097.38	109,755.18
38	2/2/2001	8/23/1944	2006	191,776.47	NO	100,594.88	91,181.59	98,476.12
38	2/2/2001	8/23/1944	2007	191,776.47	NO	103,510.68	88,265.79	88,265.79
39	7/29/2005	7/28/1969	2006	25,959.19	NO	17,473.83	8,485.36	9,164.19
39	7/29/2005	7/28/1969	2007	25,959.19	NO	17,980.32	7,978.87	7,978.87
40	7/6/1991	3/1/1931	1992	101,639.80	NO	75,000.00	26,639.80	84,505.96
40	7/6/1991	3/1/1931	1993	101,639.80	NO	75,000.00	26,639.80	78,246.26
40	7/6/1991	3/1/1931	1994	101,639.80	NO	75,016.94	26,622.86	72,404.17
40	7/6/1991	3/1/1931	1995	101,639.80	NO	75,165.57	26,474.23	66,666.62
40	7/6/1991	3/1/1931	1996	101,639.80	NO	75,297.26	26,342.54	61,421.30
40	7/6/1991	3/1/1931	1997	101,639.80	NO	75,845.99	25,793.81	55,686.91
40	7/6/1991	3/1/1931	1998	101,639.80	NO	76,943.45	24,696.35	49,368.12
40	7/6/1991	3/1/1931	1999	101,639.80	NO	77,492.18	24,147.62	44,695.56
40	7/6/1991	3/1/1931	2000	101,639.80	NO	78,758.31	22,881.49	39,214.86
40	7/6/1991	3/1/1931	2001	101,639.80	NO	81,506.37	20,133.43	31,949.23
40	7/6/1991	3/1/1931	2002	101,639.80	NO	109,239.70	-	-
40	7/6/1991	3/1/1931	2003	101,639.80	NO	135,626.91	-	-
40	7/6/1991	3/1/1931	2004	101,639.80	NO	137,884.00	-	-
40	7/6/1991	3/1/1931	2005	101,639.80	NO	142,126.59	-	-
40	7/6/1991	3/1/1931	2006	101,639.80	NO	146,369.17	-	-
40	7/6/1991	3/1/1931	2007	101,639.80	NO	150,611.76	-	-
41	1/5/1993	11/1/1938	1993	119,672.64	YES	113,931.00	5,741.64	16,864.32
41	1/5/1993	11/1/1938	1994	119,672.64	YES	117,220.50	2,452.14	6,668.91
41	1/5/1993	11/1/1938	1995	119,672.64	YES	119,400.00	272.64	686.56
41	1/5/1993	11/1/1938	1996	119,672.64	YES	120,000.00	-	-
41	1/5/1993	11/1/1938	1997	119,672.64	YES	122,500.00	-	-
41	1/5/1993	11/1/1938	1998	119,672.64	YES	127,500.00	-	-
41	1/5/1993	11/1/1938	1999	119,672.64	YES	130,000.00	-	-
41	1/5/1993	11/1/1938	2000	119,672.64	YES	132,500.00	-	-
41	1/5/1993	11/1/1938	2001	119,672.64	YES	137,500.00	-	-
41	1/5/1993	11/1/1938	2002	119,672.64	YES	150,000.00	-	-
41	1/5/1993	11/1/1938	2003	119,672.64	YES	160,000.00	-	-
41	1/5/1993	11/1/1938	2004	119,672.64	YES	162,500.00	-	-
41	1/5/1993	11/1/1938	2005	119,672.64	YES	167,500.00	-	-
41	1/5/1993	11/1/1938	2006	119,672.64	YES	172,500.00	-	-
41	1/5/1993	11/1/1938	2007	119,672.64	YES	177,500.00	-	-
42	4/24/2006	4/24/1951	2006	105,898.31	NO	87,916.66	17,981.65	19,420.18
42	4/24/2006	4/24/1951	2007	105,898.31	NO	90,464.97	15,433.34	15,433.34
43	7/26/2005	12/24/1969	2006	17,727.21	NO	14,976.18	2,751.03	2,971.11
43	7/26/2005	12/24/1969	2007	17,727.21	NO	15,410.27	2,316.94	2,316.94
44	6/30/2006	5/9/1951	2006	101,307.38	NO	89,121.43	12,185.95	13,160.83
44	6/30/2006	5/9/1951	2007	101,307.38	NO	91,704.66	9,602.72	9,602.72

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Overpayments	
							Amount Overpaid	Forward to 6/30/2007
45	10/3/1998	10/1/1940	1999	100,076.96	NO	75,000.00	25,076.96	46,415.70
45	10/3/1998	10/1/1940	2000	100,076.96	NO	75,000.00	25,076.96	42,977.50
45	10/3/1998	10/1/1940	2001	100,076.96	NO	75,000.00	25,076.96	39,793.98
45	10/3/1998	10/1/1940	2002	100,076.96	NO	91,261.12	8,815.84	12,953.36
45	10/3/1998	10/1/1940	2003	100,076.96	NO	107,771.10	-	-
45	10/3/1998	10/1/1940	2004	100,076.96	NO	109,707.79	-	-
45	10/3/1998	10/1/1940	2005	100,076.96	NO	113,083.41	-	-
45	10/3/1998	10/1/1940	2006	100,076.96	NO	116,459.03	-	-
45	10/3/1998	10/1/1940	2007	100,076.96	NO	119,834.66	-	-
46	12/7/1999	1/1/1940	2000	190,291.55	YES	132,500.00	57,791.55	99,044.57
46	12/7/1999	1/1/1940	2001	190,291.55	YES	137,500.00	52,791.55	83,773.56
46	12/7/1999	1/1/1940	2002	190,291.55	YES	150,000.00	40,291.55	59,201.51
46	12/7/1999	1/1/1940	2003	190,291.55	YES	160,000.00	30,291.55	41,211.32
46	12/7/1999	1/1/1940	2004	190,291.55	YES	162,500.00	27,791.55	35,009.35
46	12/7/1999	1/1/1940	2005	190,291.55	YES	167,500.00	22,791.55	26,584.07
46	12/7/1999	1/1/1940	2006	190,291.55	YES	172,500.00	17,791.55	19,214.88
46	12/7/1999	1/1/1940	2007	190,291.55	YES	177,500.00	12,791.55	12,791.55
47	4/1/2002	10/1/1937	2002	224,292.57	YES	150,000.00	74,292.57	109,160.16
47	4/1/2002	10/1/1937	2003	224,292.57	YES	160,000.00	64,292.57	87,469.33
47	4/1/2002	10/1/1937	2004	224,292.57	YES	162,500.00	61,792.57	77,840.84
47	4/1/2002	10/1/1937	2005	224,292.57	YES	167,500.00	56,792.57	66,242.85
47	4/1/2002	10/1/1937	2006	224,292.57	YES	172,500.00	51,792.57	55,935.98
47	4/1/2002	10/1/1937	2007	224,292.57	YES	177,500.00	46,792.57	46,792.57
48	9/1/2005	9/1/1950	2006	95,667.92	NO	87,916.66	7,751.26	8,371.36
48	9/1/2005	9/1/1950	2007	95,667.92	NO	90,464.97	5,202.95	5,202.95
49	7/6/2000	12/1/1943	2001	100,746.23	NO	75,000.00	25,746.23	40,856.03
49	7/6/2000	12/1/1943	2002	100,746.23	NO	84,548.26	16,197.97	23,800.13
49	7/6/2000	12/1/1943	2003	100,746.23	NO	94,382.73	6,363.50	8,657.47
49	7/6/2000	12/1/1943	2004	100,746.23	NO	96,148.14	4,598.09	5,792.27
49	7/6/2000	12/1/1943	2005	100,746.23	NO	99,106.55	1,639.68	1,912.52
49	7/6/2000	12/1/1943	2006	100,746.23	NO	102,064.95	-	-
49	7/6/2000	12/1/1943	2007	100,746.23	NO	105,023.36	-	-
50	10/6/2004	10/6/1949	2005	88,940.14	NO	85,368.35	3,571.79	4,166.13
50	10/6/2004	10/6/1949	2006	88,940.14	NO	87,916.66	1,023.48	1,105.36
50	10/6/2004	10/6/1949	2007	88,940.14	NO	90,464.97	-	-
51	12/31/2005	9/15/1949	2006	119,781.31	NO	99,203.57	20,577.74	22,223.96
51	12/31/2005	9/15/1949	2007	119,781.31	NO	102,079.04	17,702.27	17,702.27
52	5/21/2000	5/21/1945	2000	88,947.16	NO	75,000.00	13,947.16	23,902.98
52	5/21/2000	5/21/1945	2001	88,947.16	NO	75,000.00	13,947.16	22,132.39
52	5/21/2000	5/21/1945	2002	88,947.16	NO	77,958.75	10,988.41	16,145.57
52	5/21/2000	5/21/1945	2003	88,947.16	NO	81,231.69	7,715.47	10,496.81
52	5/21/2000	5/21/1945	2004	88,947.16	NO	82,820.04	6,127.12	7,718.40
52	5/21/2000	5/21/1945	2005	88,947.16	NO	85,368.35	3,578.81	4,174.32
52	5/21/2000	5/21/1945	2006	88,947.16	NO	87,916.66	1,030.50	1,112.94
52	5/21/2000	5/21/1945	2007	88,947.16	NO	90,464.97	-	-
53	3/26/2004	2/20/1947	2004	104,608.45	NO	100,725.14	3,883.31	4,891.86
53	3/26/2004	2/20/1947	2005	104,608.45	NO	103,824.38	784.07	914.54
53	3/26/2004	2/20/1947	2006	104,608.45	NO	106,923.62	-	-
53	3/26/2004	2/20/1947	2007	104,608.45	NO	110,022.85	-	-

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Amount Overpaid	Overpayments
								Rolled Forward to 6/30/2007
54	12/31/1997	6/1/1941	1998	83,678.77	NO	75,000.00	8,678.77	17,348.91
54	12/31/1997	6/1/1941	1999	83,678.77	NO	75,000.00	8,678.77	16,063.81
54	12/31/1997	6/1/1941	2000	83,678.77	NO	75,000.00	8,678.77	14,873.89
54	12/31/1997	6/1/1941	2001	83,678.77	NO	75,000.00	8,678.77	13,772.12
54	12/31/1997	6/1/1941	2002	83,678.77	NO	84,487.09	-	-
54	12/31/1997	6/1/1941	2003	83,678.77	NO	94,260.69	-	-
54	12/31/1997	6/1/1941	2004	83,678.77	NO	96,024.49	-	-
54	12/31/1997	6/1/1941	2005	83,678.77	NO	98,979.10	-	-
54	12/31/1997	6/1/1941	2006	83,678.77	NO	101,933.70	-	-
54	12/31/1997	6/1/1941	2007	83,678.77	NO	104,888.30	-	-
55	4/1/2002	6/18/1935	2002	242,226.86	NO	163,145.65	79,081.21	116,196.25
55	4/1/2002	6/18/1935	2003	242,226.86	NO	187,425.39	54,801.47	74,556.80
55	4/1/2002	6/18/1935	2004	242,226.86	NO	189,985.10	52,241.76	65,809.58
55	4/1/2002	6/18/1935	2005	242,226.86	NO	195,830.80	46,396.06	54,116.37
55	4/1/2002	6/18/1935	2006	242,226.86	NO	201,676.50	40,550.36	43,794.39
55	4/1/2002	6/18/1935	2007	242,226.86	NO	207,522.19	34,704.67	34,704.67
56	9/9/2005	8/14/1947	2006	120,271.09	NO	117,209.09	3,062.00	3,306.96
56	9/9/2005	8/14/1947	2007	120,271.09	NO	120,606.46	-	-
57	6/17/2006	4/24/1949	2006	123,231.56	NO	107,420.51	15,811.05	17,075.93
57	6/17/2006	4/24/1949	2007	123,231.56	NO	110,534.15	12,697.41	12,697.41
58	2/3/1998	1/1/1943	1998	139,783.57	YES	127,500.00	12,283.57	24,554.90
58	2/3/1998	1/1/1943	1999	139,783.57	YES	130,000.00	9,783.57	18,108.70
58	2/3/1998	1/1/1943	2000	139,783.57	YES	132,500.00	7,283.57	12,482.75
58	2/3/1998	1/1/1943	2001	139,783.57	YES	137,500.00	2,283.57	3,623.73
58	2/3/1998	1/1/1943	2002	139,783.57	YES	150,000.00	-	-
58	2/3/1998	1/1/1943	2003	139,783.57	YES	160,000.00	-	-
58	2/3/1998	1/1/1943	2004	139,783.57	YES	162,500.00	-	-
58	2/3/1998	1/1/1943	2005	139,783.57	YES	167,500.00	-	-
58	2/3/1998	1/1/1943	2006	139,783.57	YES	172,500.00	-	-
58	2/3/1998	1/1/1943	2007	139,783.57	YES	177,500.00	-	-
59	12/17/2005	2/27/1947	2006	129,832.62	NO	125,851.10	3,981.52	4,300.04
59	12/17/2005	2/27/1947	2007	129,832.62	NO	129,498.95	333.67	333.67
60	2/25/1997	11/1/1935	1997	90,547.71	NO	80,069.08	10,478.63	22,622.58
60	2/25/1997	11/1/1935	1998	90,547.71	NO	83,337.21	7,210.50	14,413.83
60	2/25/1997	11/1/1935	1999	90,547.71	NO	84,971.27	5,576.44	10,321.61
60	2/25/1997	11/1/1935	2000	90,547.71	NO	86,605.33	3,942.38	6,756.55
60	2/25/1997	11/1/1935	2001	90,547.71	NO	89,873.46	674.25	1,069.95
60	2/25/1997	11/1/1935	2002	90,547.71	NO	120,453.78	-	-
60	2/25/1997	11/1/1935	2003	90,547.71	NO	149,462.36	-	-
60	2/25/1997	11/1/1935	2004	90,547.71	NO	151,861.02	-	-
60	2/25/1997	11/1/1935	2005	90,547.71	NO	156,533.67	-	-
60	2/25/1997	11/1/1935	2006	90,547.71	NO	161,206.31	-	-
60	2/25/1997	11/1/1935	2007	90,547.71	NO	165,878.96	-	-
61	5/25/2005	3/31/1943	2005	186,937.92	NO	167,500.00	19,437.92	22,672.39
61	5/25/2005	3/31/1943	2006	186,937.92	NO	172,500.00	14,437.92	15,592.95
61	5/25/2005	3/31/1943	2007	186,937.92	NO	177,500.00	9,437.92	9,437.92
62	1/6/1995	12/7/1929	1995	151,349.77	NO	107,940.92	43,408.85	109,310.88
62	1/6/1995	12/7/1929	1996	151,349.77	NO	108,483.33	42,866.44	99,949.07
62	1/6/1995	12/7/1929	1997	151,349.77	NO	110,743.40	40,606.37	87,666.11
62	1/6/1995	12/7/1929	1998	151,349.77	NO	115,263.54	36,086.23	72,136.55
62	1/6/1995	12/7/1929	1999	151,349.77	NO	117,523.61	33,826.16	62,609.87
62	1/6/1995	12/7/1929	2000	151,349.77	NO	119,783.68	31,566.09	54,098.74
62	1/6/1995	12/7/1929	2001	151,349.77	NO	124,303.82	27,045.95	42,918.53
62	1/6/1995	12/7/1929	2002	151,349.77	NO	143,875.83	7,473.94	10,981.67
62	1/6/1995	12/7/1929	2003	151,349.77	NO	161,173.47	-	-
62	1/6/1995	12/7/1929	2004	151,349.77	NO	163,677.28	-	-
62	1/6/1995	12/7/1929	2005	151,349.77	NO	168,713.50	-	-
62	1/6/1995	12/7/1929	2006	151,349.77	NO	173,749.72	-	-
62	1/6/1995	12/7/1929	2007	151,349.77	NO	178,785.95	-	-

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Overpayments	
							Amount Overpaid	Rolled Forward to 6/30/2007
63	4/1/1997	7/1/1941	1997	78,022.97	NO	75,000.00	3,022.97	6,526.36
63	4/1/1997	7/1/1941	1998	78,022.97	NO	75,000.00	3,022.97	6,042.92
63	4/1/1997	7/1/1941	1999	78,022.97	NO	75,000.00	3,022.97	5,595.30
63	4/1/1997	7/1/1941	2000	78,022.97	NO	75,000.00	3,022.97	5,180.83
63	4/1/1997	7/1/1941	2001	78,022.97	NO	75,000.00	3,022.97	4,797.07
63	4/1/1997	7/1/1941	2002	78,022.97	NO	80,928.26	-	-
63	4/1/1997	7/1/1941	2003	78,022.97	NO	87,159.22	-	-
63	4/1/1997	7/1/1941	2004	78,022.97	NO	88,828.50	-	-
63	4/1/1997	7/1/1941	2005	78,022.97	NO	91,561.69	-	-
63	4/1/1997	7/1/1941	2006	78,022.97	NO	94,294.87	-	-
63	4/1/1997	7/1/1941	2007	78,022.97	NO	97,028.06	-	-
64	12/31/2005	7/12/1948	2006	117,869.69	NO	110,811.07	7,058.62	7,623.31
64	12/31/2005	7/12/1948	2007	117,869.69	NO	114,022.99	3,846.70	3,846.70
65	9/2/2005	3/25/1950	2006	188,639.83	YES	172,500.00	16,139.83	17,431.02
65	9/2/2005	3/25/1950	2007	188,639.83	YES	177,500.00	11,139.83	11,139.83
66	4/12/2003	4/1/1943	2003	161,907.48	YES	160,000.00	1,907.48	2,595.11
66	4/12/2003	4/1/1943	2004	161,907.48	YES	162,500.00	-	-
66	4/12/2003	4/1/1943	2005	161,907.48	YES	167,500.00	-	-
66	4/12/2003	4/1/1943	2006	161,907.48	YES	172,500.00	-	-
66	4/12/2003	4/1/1943	2007	161,907.48	YES	177,500.00	-	-
67	6/30/2004	8/6/1946	2004	164,671.97	YES	162,500.00	2,171.97	2,736.05
67	6/30/2004	8/6/1946	2005	164,671.97	YES	167,500.00	-	-
67	6/30/2004	8/6/1946	2006	164,671.97	YES	172,500.00	-	-
67	6/30/2004	8/6/1946	2007	164,671.97	YES	177,500.00	-	-
68	4/18/2006	3/10/1945	2006	193,659.75	NO	157,717.20	35,942.55	38,817.95
68	4/18/2006	3/10/1945	2007	193,659.75	NO	162,288.72	31,371.03	31,371.03
69	10/4/1997	4/1/1933	1998	131,743.67	NO	110,570.83	21,172.84	42,324.60
69	10/4/1997	4/1/1933	1999	131,743.67	NO	112,738.89	19,004.78	35,176.52
69	10/4/1997	4/1/1933	2000	131,743.67	NO	114,906.94	16,836.73	28,855.20
69	10/4/1997	4/1/1933	2001	131,743.67	NO	119,243.06	12,500.61	19,836.90
69	10/4/1997	4/1/1933	2002	131,743.67	NO	140,705.56	-	-
69	10/4/1997	4/1/1933	2003	131,743.67	NO	160,000.00	-	-
69	10/4/1997	4/1/1933	2004	131,743.67	NO	162,500.00	-	-
69	10/4/1997	4/1/1933	2005	131,743.67	NO	167,500.00	-	-
69	10/4/1997	4/1/1933	2006	131,743.67	NO	172,500.00	-	-
69	10/4/1997	4/1/1933	2007	131,743.67	NO	177,500.00	-	-
70	3/30/2002	2/1/1943	2002	168,017.97	YES	150,000.00	18,017.97	26,474.31
70	3/30/2002	2/1/1943	2003	168,017.97	YES	160,000.00	8,017.97	10,908.36
70	3/30/2002	2/1/1943	2004	168,017.97	YES	162,500.00	5,517.97	6,951.05
70	3/30/2002	2/1/1943	2005	168,017.97	YES	167,500.00	517.97	604.16
70	3/30/2002	2/1/1943	2006	168,017.97	YES	172,500.00	-	-
70	3/30/2002	2/1/1943	2007	168,017.97	YES	177,500.00	-	-
71	10/26/1999	10/26/1944	2000	77,197.79	NO	75,000.00	2,197.79	3,766.62
71	10/26/1999	10/26/1944	2001	77,197.79	NO	75,000.00	2,197.79	3,487.61
71	10/26/1999	10/26/1944	2002	77,197.79	NO	77,958.75	-	-
71	10/26/1999	10/26/1944	2003	77,197.79	NO	81,231.69	-	-
71	10/26/1999	10/26/1944	2004	77,197.79	NO	82,820.04	-	-
71	10/26/1999	10/26/1944	2005	77,197.79	NO	85,368.35	-	-
71	10/26/1999	10/26/1944	2006	77,197.79	NO	87,916.66	-	-
71	10/26/1999	10/26/1944	2007	77,197.79	NO	90,464.97	-	-
72	1/9/1996	7/1/1933	1996	106,200.77	NO	88,177.78	18,022.99	42,023.10
72	1/9/1996	7/1/1933	1997	106,200.77	NO	90,014.81	16,185.96	34,944.27
72	1/9/1996	7/1/1933	1998	106,200.77	NO	93,688.89	12,511.88	25,011.30
72	1/9/1996	7/1/1933	1999	106,200.77	NO	95,525.93	10,674.84	19,758.38
72	1/9/1996	7/1/1933	2000	106,200.77	NO	97,362.96	8,837.81	15,146.45
72	1/9/1996	7/1/1933	2001	106,200.77	NO	101,037.04	5,163.73	8,194.19
72	1/9/1996	7/1/1933	2002	106,200.77	NO	131,437.04	-	-
72	1/9/1996	7/1/1933	2003	106,200.77	NO	160,000.00	-	-
72	1/9/1996	7/1/1933	2004	106,200.77	NO	162,500.00	-	-
72	1/9/1996	7/1/1933	2005	106,200.77	NO	167,500.00	-	-
72	1/9/1996	7/1/1933	2006	106,200.77	NO	172,500.00	-	-
72	1/9/1996	7/1/1933	2007	106,200.77	NO	177,500.00	-	-

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Amount Overpaid	Overpayments
								Rolled Forward to 6/30/2007
73	3/30/2002	6/1/1943	2002	182,357.59	YES	150,000.00	32,357.59	47,543.92
73	3/30/2002	6/1/1943	2003	182,357.59	YES	160,000.00	22,357.59	30,417.25
73	3/30/2002	6/1/1943	2004	182,357.59	YES	162,500.00	19,857.59	25,014.84
73	3/30/2002	6/1/1943	2005	182,357.59	YES	167,500.00	14,857.59	17,329.89
73	3/30/2002	6/1/1943	2006	182,357.59	YES	172,500.00	9,857.59	10,646.20
73	3/30/2002	6/1/1943	2007	182,357.59	YES	177,500.00	4,857.59	4,857.59
74	8/1/2005	7/31/1950	2006	185,520.96	YES	172,500.00	13,020.96	14,062.64
74	8/1/2005	7/31/1950	2007	185,520.96	YES	177,500.00	8,020.96	8,020.96
75	1/28/2006	4/8/1947	2006	145,464.90	NO	125,851.10	19,613.80	21,182.91
75	1/28/2006	4/8/1947	2007	145,464.90	NO	129,498.95	15,965.95	15,965.95
76	10/10/2005	7/4/1949	2006	102,863.41	NO	98,941.06	3,922.35	4,236.13
76	10/10/2005	7/4/1949	2007	102,863.41	NO	101,808.92	1,054.49	1,054.49
77	11/15/2002	11/1/1944	2003	169,426.56	YES	160,000.00	9,426.56	12,824.73
77	11/15/2002	11/1/1944	2004	169,426.56	YES	162,500.00	6,926.56	8,725.47
77	11/15/2002	11/1/1944	2005	169,426.56	YES	167,500.00	1,926.56	2,247.13
77	11/15/2002	11/1/1944	2006	169,426.56	YES	172,500.00	-	-
77	11/15/2002	11/1/1944	2007	169,426.56	YES	177,500.00	-	-
78	6/30/2006	11/14/1951	2006	182,280.37	YES	172,500.00	9,780.37	10,562.80
78	6/30/2006	11/14/1951	2007	182,280.37	YES	177,500.00	4,780.37	4,780.37
79	4/1/2002	10/1/1945	2002	154,886.10	YES	150,000.00	4,886.10	7,179.28
79	4/1/2002	10/1/1945	2003	154,886.10	YES	160,000.00	-	-
79	4/1/2002	10/1/1945	2004	154,886.10	YES	162,500.00	-	-
79	4/1/2002	10/1/1945	2005	154,886.10	YES	167,500.00	-	-
79	4/1/2002	10/1/1945	2006	154,886.10	YES	172,500.00	-	-
79	4/1/2002	10/1/1945	2007	154,886.10	YES	177,500.00	-	-
80	11/6/2000	10/30/1945	2001	75,481.79	NO	75,000.00	481.79	764.53
80	11/6/2000	10/30/1945	2002	75,481.79	NO	78,024.74	-	-
80	11/6/2000	10/30/1945	2003	75,481.79	NO	81,363.41	-	-
80	11/6/2000	10/30/1945	2004	75,481.79	NO	82,953.56	-	-
80	11/6/2000	10/30/1945	2005	75,481.79	NO	85,505.97	-	-
80	11/6/2000	10/30/1945	2006	75,481.79	NO	88,058.39	-	-
80	11/6/2000	10/30/1945	2007	75,481.79	NO	90,610.81	-	-
81	10/11/2003	3/5/1949	2004	166,581.16	YES	162,500.00	4,081.16	5,141.08
81	10/11/2003	3/5/1949	2005	166,581.16	YES	167,500.00	-	-
81	10/11/2003	3/5/1949	2006	166,581.16	YES	172,500.00	-	-
81	10/11/2003	3/5/1949	2007	166,581.16	YES	177,500.00	-	-
82	8/5/2000	9/1/1939	2001	97,643.62	NO	86,319.69	11,323.93	17,969.66
82	8/5/2000	9/1/1939	2002	97,643.62	NO	115,690.80	-	-
82	8/5/2000	9/1/1939	2003	97,643.62	NO	143,588.61	-	-
82	8/5/2000	9/1/1939	2004	97,643.62	NO	145,929.84	-	-
82	8/5/2000	9/1/1939	2005	97,643.62	NO	150,419.99	-	-
82	8/5/2000	9/1/1939	2006	97,643.62	NO	154,910.14	-	-
82	8/5/2000	9/1/1939	2007	97,643.62	NO	159,400.29	-	-
83	2/6/2004	1/1/1946	2004	165,203.49	YES	162,500.00	2,703.49	3,405.62
83	2/6/2004	1/1/1946	2005	165,203.49	YES	167,500.00	-	-
83	2/6/2004	1/1/1946	2006	165,203.49	YES	172,500.00	-	-
83	2/6/2004	1/1/1946	2007	165,203.49	YES	177,500.00	-	-
84	12/31/2002	12/1/1941	2003	163,616.96	YES	160,000.00	3,616.96	4,920.84
84	12/31/2002	12/1/1941	2004	163,616.96	YES	162,500.00	1,116.96	1,407.05
84	12/31/2002	12/1/1941	2005	163,616.96	YES	167,500.00	-	-
84	12/31/2002	12/1/1941	2006	163,616.96	YES	172,500.00	-	-
84	12/31/2002	12/1/1941	2007	163,616.96	YES	177,500.00	-	-
85	4/1/2002	2/7/1941	2002	158,193.67	YES	150,000.00	8,193.67	12,039.20
85	4/1/2002	2/7/1941	2003	158,193.67	YES	160,000.00	-	-
85	4/1/2002	2/7/1941	2004	158,193.67	YES	162,500.00	-	-
85	4/1/2002	2/7/1941	2005	158,193.67	YES	167,500.00	-	-
85	4/1/2002	2/7/1941	2006	158,193.67	YES	172,500.00	-	-
85	4/1/2002	2/7/1941	2007	158,193.67	YES	177,500.00	-	-
86	2/6/2004	6/15/1945	2004	163,573.22	YES	162,500.00	1,073.22	1,351.94
86	2/6/2004	6/15/1945	2005	163,573.22	YES	167,500.00	-	-
86	2/6/2004	6/15/1945	2006	163,573.22	YES	172,500.00	-	-
86	2/6/2004	6/15/1945	2007	163,573.22	YES	177,500.00	-	-

SDCERS Retroactive 415 Testing for VCP (2007)

Member ID	Date of Retirement	Member DOB	415 Limit Year	415 Testing Benefit	Uniform?? (Yes/No)	Adjusted 415 Limit	Overpayments	
							Amount Overpaid	Rolled Forward to 6/30/2007
87	11/23/2002	11/17/1946	2003	162,957.90	YES	160,000.00	2,957.90	4,024.19
87	11/23/2002	11/17/1946	2004	162,957.90	YES	162,500.00	457.90	576.82
87	11/23/2002	11/17/1946	2005	162,957.90	YES	167,500.00	-	-
87	11/23/2002	11/17/1946	2006	162,957.90	YES	172,500.00	-	-
87	11/23/2002	11/17/1946	2007	162,957.90	YES	177,500.00	-	-
88	3/31/2001	12/3/1943	2001	76,003.90	NO	75,000.00	1,003.90	1,593.07
88	3/31/2001	12/3/1943	2002	76,003.90	NO	87,931.01	-	-
88	3/31/2001	12/3/1943	2003	76,003.90	NO	101,130.32	-	-
88	3/31/2001	12/3/1943	2004	76,003.90	NO	102,982.98	-	-
88	3/31/2001	12/3/1943	2005	76,003.90	NO	106,151.69	-	-
88	3/31/2001	12/3/1943	2006	76,003.90	NO	109,320.40	-	-
88	3/31/2001	12/3/1943	2007	76,003.90	NO	112,489.10	-	-
89	4/1/2002	11/1/1941	2002	155,114.20	YES	150,000.00	5,114.20	7,514.44
89	4/1/2002	11/1/1941	2003	155,114.20	YES	160,000.00	-	-
89	4/1/2002	11/1/1941	2004	155,114.20	YES	162,500.00	-	-
89	4/1/2002	11/1/1941	2005	155,114.20	YES	167,500.00	-	-
89	4/1/2002	11/1/1941	2006	155,114.20	YES	172,500.00	-	-
89	4/1/2002	11/1/1941	2007	155,114.20	YES	177,500.00	-	-
90	11/10/2001	6/17/1945	2002	87,185.08	NO	83,667.46	3,517.62	5,168.53
90	11/10/2001	6/17/1945	2003	87,185.08	NO	92,625.37	-	-
90	11/10/2001	6/17/1945	2004	87,185.08	NO	94,367.63	-	-
90	11/10/2001	6/17/1945	2005	87,185.08	NO	97,271.25	-	-
90	11/10/2001	6/17/1945	2006	87,185.08	NO	100,174.87	-	-
90	11/10/2001	6/17/1945	2007	87,185.08	NO	103,078.48	-	-
91	3/31/2002	3/21/1944	2002	152,901.70	YES	150,000.00	2,901.70	4,263.55
91	3/31/2002	3/21/1944	2003	152,901.70	YES	160,000.00	-	-
91	3/31/2002	3/21/1944	2004	152,901.70	YES	162,500.00	-	-
91	3/31/2002	3/21/1944	2005	152,901.70	YES	167,500.00	-	-
91	3/31/2002	3/21/1944	2006	152,901.70	YES	172,500.00	-	-
91	3/31/2002	3/21/1944	2007	152,901.70	YES	177,500.00	-	-
92	3/29/1997	8/1/1932	1997	112,133.77	NO	107,482.41	4,651.36	10,041.94
92	3/29/1997	8/1/1932	1998	112,133.77	NO	111,869.44	264.33	528.40
92	3/29/1997	8/1/1932	1999	112,133.77	NO	114,062.96	-	-
92	3/29/1997	8/1/1932	2000	112,133.77	NO	116,256.48	-	-
92	3/29/1997	8/1/1932	2001	112,133.77	NO	120,643.52	-	-
92	3/29/1997	8/1/1932	2002	112,133.77	NO	141,418.52	-	-
92	3/29/1997	8/1/1932	2003	112,133.77	NO	160,000.00	-	-
92	3/29/1997	8/1/1932	2004	112,133.77	NO	162,500.00	-	-
92	3/29/1997	8/1/1932	2005	112,133.77	NO	167,500.00	-	-
92	3/29/1997	8/1/1932	2006	112,133.77	NO	172,500.00	-	-
92	3/29/1997	8/1/1932	2007	112,133.77	NO	177,500.00	-	-
93	6/30/2002	6/26/1941	2002	131,018.76	NO	116,632.29	14,386.47	21,138.45
93	6/30/2002	6/26/1941	2003	131,018.76	NO	144,750.41	-	-
93	6/30/2002	6/26/1941	2004	131,018.76	NO	147,103.75	-	-
93	6/30/2002	6/26/1941	2005	131,018.76	NO	151,630.02	-	-
93	6/30/2002	6/26/1941	2006	131,018.76	NO	156,156.29	-	-
93	6/30/2002	6/26/1941	2007	131,018.76	NO	160,682.56	-	-
94	11/20/2006	10/29/1951	2007	152,463.74	NO	90,975.43	61,488.31	61,488.31
95	10/30/2006	10/30/1951	2007	128,400.36	NO	90,464.97	37,935.39	37,935.39
96	1/31/2007	12/23/1943	2007	190,384.13	NO	177,500.00	12,884.13	12,884.13
97	9/21/2006	12/23/1943	2007	192,371.43	YES	177,500.00	14,871.43	14,871.43
98	3/24/2007	7/20/1948	2007	136,542.63	NO	127,955.35	8,587.28	8,587.28
99	4/6/2007	4/17/1951	2007	102,208.18	NO	98,948.37	3,259.81	3,259.81
100	6/2/2007	5/10/1952	2007	102,783.47	NO	90,999.74	11,783.73	11,783.73
101	1/20/2007	1/20/1952	2007	104,098.16	NO	90,464.97	13,633.19	13,633.19
102	11/14/2006	9/1/1951	2007	101,614.89	NO	92,239.43	9,375.46	9,375.46

Total	8,160,027.01
--------------	---------------------

EXHIBIT

General - Blended - SSNRA = 65

Age	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
35	75,000	75,000	75,000	75,000	75,000	75,000	75,000	14,947	15,914	16,881	17,848	
36	75,000	75,000	75,000	75,000	75,000	75,000	75,000	16,204	17,171	18,138	19,105	19,218
37	75,000	75,000	75,000	75,000	75,000	75,000	75,000	17,571	18,538	19,505	20,472	20,845
38	75,000	75,000	75,000	75,000	75,000	75,000	75,000	19,058	20,025	20,992	21,959	22,616
39	75,000	75,000	75,000	75,000	75,000	75,000	75,000	20,678	21,645	22,612	23,579	24,546
40	75,000	75,000	75,000	75,000	75,000	75,000	75,000	22,442	23,409	24,376	25,343	26,310
41	75,000	75,000	75,000	75,000	75,000	75,000	75,000	24,366	25,333	26,300	27,267	28,234
42	75,000	75,000	75,000	75,000	75,000	75,000	75,000	26,464	27,431	28,398	29,365	30,332
43	75,000	75,000	75,000	75,000	75,000	75,000	75,000	28,755	29,722	30,689	31,656	32,623
44	75,000	75,000	75,000	75,000	75,000	75,000	75,000	31,258	32,225	33,192	34,159	35,126
45	75,000	75,000	75,000	75,000	75,000	75,000	75,000	33,994	34,961	35,928	36,895	37,862
46	75,000	75,000	75,000	75,000	75,000	75,000	75,000	36,989	37,956	38,923	39,890	40,857
47	75,000	75,000	75,000	75,000	75,000	75,000	75,000	40,269	41,236	42,203	43,170	44,137
48	75,000	75,000	75,000	75,000	75,000	75,000	75,000	43,867	44,834	45,801	46,768	47,735
49	75,000	75,000	75,000	75,000	75,000	75,000	75,000	47,817	48,784	49,751	50,718	51,685
50	75,000	75,000	75,000	75,000	75,000	75,000	75,000	52,158	53,125	54,092	55,059	56,026
51	75,000	75,000	75,000	75,000	75,000	75,000	75,000	56,935	57,902	58,869	59,836	60,803
52	75,000	75,000	75,000	75,000	75,000	75,000	75,000	62,200	63,167	64,134	65,101	66,068
53	75,000	75,000	75,000	75,000	75,000	75,000	75,000	68,011	68,978	69,945	70,912	71,879
54	75,000	75,000	75,000	75,000	75,000	75,000	75,000	74,434	75,401	76,368	77,335	78,302
55	75,000	75,000	75,000	75,000	75,000	75,000	75,000	81,546	82,513	83,480	84,447	85,414
56	75,000	75,000	75,000	75,000	75,000	75,000	75,000	89,434	90,401	91,368	92,335	93,302
57	75,000	75,000	75,000	75,000	75,000	75,000	75,000	98,200	99,167	100,134	101,101	102,068
58	75,000	75,000	75,000	75,000	75,000	75,000	75,223	107,959	108,926	109,893	110,860	111,827
59	75,000	75,000	75,000	75,000	76,978	76,978	79,938	118,849	119,816	120,783	121,750	122,717
60	78,423	78,423	81,691	84,959	84,959	88,226	91,494	131,025	132,092	133,159	134,226	135,293
61	86,693	86,693	90,305	93,917	93,917	97,529	101,141	144,670	145,737	146,804	147,871	148,938
62	96,000	96,000	100,000	104,000	104,000	108,000	112,000	160,000	161,000	162,000	163,000	164,000
63	104,000	104,000	108,333	112,667	112,667	117,000	121,333	160,000	161,000	162,000	163,000	164,000
64	112,000	112,000	116,667	121,333	121,333	126,000	130,667	160,000	161,000	162,000	163,000	164,000
65	120,000	120,000	125,000	130,000	130,000	135,000	140,000	160,000	161,000	162,000	163,000	164,000
66	120,000	120,000	125,000	130,000	130,000	135,000	140,000	160,000	161,000	162,000	163,000	164,000
67	120,000	120,000	125,000	130,000	130,000	135,000	140,000	160,000	161,000	162,000	163,000	164,000

General - Blended - SSNRA = 66

Age	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
35	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	14,947	15,414	15,881	16,348
36	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	16,204	16,710	17,217	17,723
37	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	17,571	18,120	18,669	19,218
38	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	19,058	19,654	20,249	20,845
39	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	20,678	21,324	21,970	22,616
40	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	22,442	23,144	23,845	24,546
41	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	24,366	25,127	25,889	26,650
42	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	26,464	27,291	28,118	28,945
43	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	28,755	29,654	30,552	31,451
44	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	31,258	32,235	33,211	34,188
45	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	33,994	35,056	36,119	37,182
46	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	36,989	38,145	39,301	40,457
47	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	40,269	41,528	42,786	44,045
48	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	43,867	45,238	46,609	47,980
49	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	47,817	49,311	50,805	52,299
50	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	52,158	53,788	55,418	57,047
51	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	56,935	58,714	60,494	62,273
52	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	62,200	64,144	66,088	68,032
53	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	68,011	70,137	72,262	74,387
54	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	74,434	76,760	79,086	81,412
55	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	81,546	84,094	86,643	89,191
56	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	89,434	92,229	95,024	97,818
57	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	98,200	101,268	104,337	107,406
58	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	107,959	111,333	114,707	118,081
59	75,000	75,000	75,000	75,000	75,000	75,000	77,718	77,718	118,849	122,563	126,277	129,991
60	75,000	75,000	76,585	79,649	79,649	82,712	85,776	85,776	131,025	135,119	139,214	143,308
61	81,274	81,274	84,661	88,047	88,047	91,434	94,820	94,820	144,670	149,191	153,712	158,233
62	90,000	90,000	93,750	97,500	97,500	101,250	105,000	105,000	160,000	160,000	165,000	170,000
63	98,000	98,000	102,083	106,167	106,167	110,250	114,333	114,333	160,000	160,000	165,000	170,000
64	106,000	106,000	110,417	114,833	114,833	119,250	123,667	123,667	160,000	160,000	165,000	170,000
65	114,000	114,000	118,750	123,500	123,500	128,250	133,000	133,000	160,000	160,000	165,000	170,000
66	120,000	120,000	125,000	130,000	130,000	135,000	140,000	140,000	160,000	160,000	165,000	170,000
67	120,000	120,000	125,000	130,000	130,000	135,000	140,000	140,000	160,000	160,000	165,000	170,000

General - Blended - SSNRA =67

Age	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
35	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
36	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
37	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
38	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
39	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
40	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
41	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
42	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
43	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
44	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
45	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
46	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
47	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
48	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
49	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
50	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
51	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
52	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
53	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
54	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
55	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
56	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
57	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
58	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
59	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
60	75,000	75,000	75,000	75,000	75,000	77,198	80,057	80,057	80,057	80,057	80,057	80,057
61	75,856	75,856	79,017	82,177	82,177	85,338	88,499	88,499	88,499	88,499	88,499	88,499
62	84,000	84,000	87,500	91,000	91,000	94,500	98,000	98,000	98,000	98,000	98,000	98,000
63	92,000	92,000	95,833	99,667	99,667	103,500	107,333	107,333	107,333	107,333	107,333	107,333
64	100,000	100,000	104,167	108,333	108,333	112,500	116,667	116,667	116,667	116,667	116,667	116,667
65	108,000	108,000	112,500	117,000	117,000	121,500	126,000	126,000	126,000	126,000	126,000	126,000
66	114,000	114,000	118,750	123,500	123,500	128,250	133,000	133,000	133,000	133,000	133,000	133,000
67	120,000	120,000	125,000	130,000	130,000	135,000	140,000	140,000	140,000	140,000	140,000	140,000